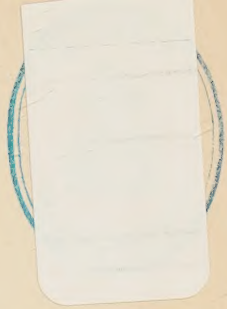

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# A MANUAL OF

# MORAL THEOLOGY

FOR

## ENGLISH-SPEAKING COUNTRIES

BY

REV. THOMAS SLATER, S.J.

ST. BEUNO'S COLLEGE, ST. ASAPH

WITH NOTES ON AMERICAN LEGISLATION BY

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## NOTICE TO THE READER

Rev. Michael Martin, S.J., the writer of the "Notes" incorporated in the text of this volume, was asked by the Publishers to add some references and notes on American legislation, which might render it more adapted to the United States. In doing so, he has confined himself to those points in which the ecclesiastical or civil laws of the United States differ from those of England. The reader need not expect to find an allusion to any other topic.

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# BOOK I

## THE SACRAMENTS IN GENERAL

### CHAPTER I

#### THE NATURE OF A SACRAMENT

1. Merely external religion, without devotion of mind and heart to the service of God, is hypocrisy, but though we should serve God in spirit and in truth external rites and ceremonies are not excluded from religion. On the contrary, they form an essential part of it. Man is composed of body and soul; both come from God, and both should share in the worship due to their Creator. Besides, internal religion will be faint and likely to evaporate altogether, unless it sometimes finds expression in outward acts. God has provided for these wants of human nature by instituting the sacred rites which we call sacraments, as essential parts of true religion. They serve also as signs by which the faithful are known to and united among themselves and distinguished from those outside the fold. They serve, too, as an external profession of faith, and as a means of practising the very salutary virtue of humility, inasmuch as we are compelled to seek in external rites the spiritual help of which we stand in need, whereby intellectual pride is humbled.

There were sacraments under the Old Law as there are under the New, although the latter are far more efficacious

than the former. As expressing what is common to the sacraments of Judaism and Christianity, a sacrament may be defined to be an outward sign of inward grace. A sacrament, then, is some outward rite or ceremony instituted by God, to show forth and make known the grace which He thereby bestows on the soul of the recipient. Thus circumcision signified separation from the idolatrous world, incorporation among the people of God, and the infusion of grace into the soul for the remission of original sin. The sacraments of the Old Law produced their effect by exciting the faith of the ministers and recipients of them and by the profession of faith in the coming Redeemer which their use contained.

The sacraments of the New Law were instituted by Christ our Lord, and they confer the grace which they signify, not on account of the meritorious dispositions with which they are ministered or received, but on account of their dignity and intrinsic excellence. They were instituted by Christ, they are administered in His name and by His authority, and thus they are in a true sense the actions of Christ our Lord executed by His ministers. Divines express this by saying that the sacraments of the Christian Church confer grace *ex opere operato*, while those of the Old Law produced it *ex opere operantis*. A sacrament, then, of the New Law may be defined to be an outward sign of invisible grace instituted by Christ to confer the grace which it signifies.

There are certain rites and ceremonies in use in the Church which are called sacramentals. Of these we may mention the consecration of abbots, the first tonsure of clerics, the sacring of kings, the blessing of chalices and bells, holy water, agnus Dei, scapulars, and many more.

They are called sacramentals because they are sacred rites which, if properly used according to the mind of the Church, confer spiritual graces on the soul of him who uses them. They do this through the approbation and blessing of the Church, the Spouse of Christ, whose prayers and desires Christ always listens to, and through the good dispositions of those who use them. They thus differ from sacraments, as also in the grace which they produce. They confer actual graces, special helps to do good and avoid evil, given by God in answer to the prayers of the Church and the pious desires of those who use them properly.

2. The Council of Trent defined as of faith that there are seven sacraments instituted by Christ our Lord: Baptism, Confirmation, the Eucharist, Penance, Extreme Unction, Orders, and Matrimony; that these sacraments contain the grace which they signify, and that they always confer grace on all those who receive them and put no obstacle to their effect. The sacraments, then, require certain dispositions on the part of the recipient in order that they may produce their effect. They will be validly received if nothing that is essential be wanting to them, but in order to produce their effect when they are received the recipient must have the required dispositions. I may apply a match to a fagot of wood but this will not take fire if it is sodden with water. Similarly, if an adult asks for Baptism and is rightly baptized the sacrament will be validly received, but if the recipient has no faith or no sorrow for his sins the Baptism will indeed imprint a character, but it will not infuse sanctifying grace in the soul. In such a case as this the sacrament is validly but not licitly received; it is said by divines to be unformed, not formed.

3. The Council of Trent also defined it to be of faith that the three sacraments, Baptism, Confirmation, and Orders, whenever they are validly received, imprint on the soul a certain spiritual mark which is called a character. This character serves to distinguish in the eyes of God and of His saints those who have received the sacrament in question; it is indelible, and prevents the sacrament from being received a second time. It is, however, compatible with the presence of mortal sin in the soul, so that, as was said above, a valid sacrament imprints its proper character even when on account of some obstacle in the recipient it is unformed and does not convey sanctifying grace to the soul.

The question here occurs whether a valid but unformed sacrament will afterward produce grace in the soul, if and when the obstacle be removed. The common opinion of Doctors and divines is that it will do so in the case of the three sacraments which impress a character on the soul. This opinion is founded on the tradition of the Church and on what is to be expected from the goodness of God and the nature of the sacraments. A cause which is in existence, but which was hitherto prevented from producing its full effect on account of some obstacle in the way, will produce that effect when the obstacle is removed. Many divines hold the same doctrine of reviviscence concerning the sacraments of Matrimony and Extreme Unction, which may not be repeated at the will of the recipient. Whether it is also applicable to Penance is a much disputed point, while it is commonly denied that the sacrament of the Holy Eucharist can afterward produce its effect if it was unformed when received.

4. The sacramental grace which is conferred by the

sacraments is habitual or sanctifying grace as directed toward the particular end for which the sacrament from which it flows has been instituted. Together, then, with the grace which justifies the sinner, or which increases the sanctifying grace of the soul in friendship with God, a sacrament gives a title to receive from God special help or actual graces when they are required by the recipient of the sacrament. Thus, the sacrament of Penance if worthily received infuses sanctifying grace into the soul by which the sins confessed are blotted out, and, moreover, it gives the sinner a title to receive actual graces in time of temptation, so as to enable him not to yield. In the same way the Holy Eucharist increases sanctifying grace within the soul, making it more holy and more pleasing in the sight of God, and fresh help is given to enable it to remain steadfast in the friendship of God.

The sacraments of Baptism and Penance, which remit sin and give sanctifying grace to souls that were deprived of it, are called sacraments which give the first grace, or sacraments of the dead, inasmuch as they give spiritual life to those who were spiritually dead; while the sacraments which should only be received by such as are already in the state of grace are said to confer the second grace, and are called sacraments of the living. If the soul is already justified and in the state of grace, sacraments of the dead confer second grace; while Extreme Unction may, as we shall see, confer the first grace although it is primarily a sacrament of the living; and it is a probable opinion that the other sacraments may *per accidens* confer the first grace when received in good faith by the sinner. Inasmuch as a sacrament confers grace in virtue of the worth and dignity of the sacred rite itself, the quantity of

grace given will *per se* be the same for all who receive it. However, *per accidens*, since a cause acts with greater or less efficacy in proportion to the dispositions of the subject on which it works, so a sacrament will give more grace to such as receive it in better dispositions. It may, then, very well be that more grace will be obtained from holy communion received two or three times a week with better dispositions than from daily communion made without fervor.

5. The Council of Trent anathematizes any one who shall say that the sacraments of the New Law are not necessary for salvation, though it also teaches that not all the sacraments are necessary for every individual. Under each sacrament it will be explained how far it is necessary and in what sense.

## CHAPTER II

### THE MATTER AND FORM OF THE SACRAMENTS

1. The decree of Eugenius IV, for the instruction of the Armenians, lays down that all the sacraments consist essentially of three things: the matter, the form, and the minister who makes the sacrament with the intention of doing what the Church does. And, it adds, if any one of these elements be wanting the sacrament is not made. The sacraments, then, are not simple but composite signs which consist of two distinct elements. One of these in technical language is called the matter, because it is that portion of the sacramental sign which is the most indeterminate with respect to conveying the meaning which the sacrament signifies. This matter is called remote when considered by itself; it is called proximate when it is taken and applied by the minister to the making of the sacrament. The second element consists of words, and this part is called the form of the sacrament, because the words determine the matter to the more complete signification expressed by the whole sacramental sign. Thus in Baptism the water considered by itself is the remote matter of the sacrament and does not necessarily signify washing; water may be used to slake the thirst, and for many other purposes. The application of the water to the person to be baptized is the proximate matter, and when this is done

with the form of words, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost," the whole composite rite assumes a religious aspect, and signifies according to the intention of the minister the washing away of sin from the soul.

2. The minister of a sacrament must necessarily use the matter and form which were instituted by Christ, for He alone as God-Man has the power to cause grace to be conveyed to the soul by means of sacred rites.

There must be no change made in the matter and form of the sacraments; not even the Church's authority suffices for that. If a substantial change be made either in the matter or in the form, the sacrament is destroyed. The matter will be substantially changed if in the estimation of ordinary men it is no longer the same, but something else. Thus if the wine has become vinegar, it can not be used as the matter of the Eucharist. The form will be substantially changed if the sense is no longer the same, but different. Thus, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost" is the divinely instituted form for Baptism, and if the minister baptize with the words, "I baptize thee in the name of the Trinity" it is no sacrament, because of the substantial change. It is not lawful to make any change in the matter and form of the sacraments, but if an accidental and not a substantial change be made, so that the matter and the sense of the form remain the same, the sacrament will not be rendered invalid, as a general rule. However, a change which in itself is slight and accidental may be made substantial by the perverse intention of the minister. For the sense may then be quite different, and that different sense is expressed in the form. Thus Pope Zacharias wrote to St.

Boniface that Baptism administered with the form, *Baptizo te in nomine Patria, et Filia, et Spiritus Sancta,* is valid when the mistakes are made through ignorance of Latin, and not through heresy or a perverse intention.[1] If, then, such changes were introduced to give expression to heresy, the sense would be substantially changed and the form would be invalidated. Similarly, if Baptism were given with the form, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost, and of the Blessed Virgin Mary," the sacrament would be invalid if the minister intended to baptize in the name of the Blessed Virgin as of one of the Persons in the Godhead; if the addition was made through mistaken devotion to the Mother of God the sacrament would not be invalid. On the principles just stated Leo XIII decided that Anglican ordinations are invalid.

3. Except in case of necessity it is not lawful in the administration of the sacraments to use only probable matter or a probably valid form. An opinion contrary to this doctrine was condemned by Innocent XI, March 2, 1679. Justice and charity, which demand that the minister confer a sacrament validly, and do nothing to imperil its validity, require that he should use only certain matter and the certainly valid form as far as possible. Reverence also for the sacrament and for Christ, who instituted it, makes it necessary to take all due care that when a sacrament is administered, it should be properly and validly administered. If, however, in a particular case only doubtful matter is at hand, and unless the sacrament is at once administered the subject may be altogether deprived of it, then such doubtful matter may be used, since

[1] C. 86, d. iv, de consec.

the reasons to the contrary then cease to be valid, because the sacraments were made for the benefit of man, not man for the sacraments.

4. As the matter and the form of a sacrament constitute together one composite sign of grace, there must not be such an interval between them as to destroy their unity. In the Holy Eucharist the form requires that the matter should be physically present at the time when the words of consecration are uttered. In the other sacraments it is not necessary that the matter and form should be put at the same time in order that the sacrament may be valid; it is sufficient for the validity if there be a moral union between them so that according to a moral estimate they form one whole. Thus in Baptism, although the rubrics prescribe that the words should be said while the water is poured on the head, yet if a brief interval, say the space of a *Pater* or of an *Ave*, separate the matter and the form, the sacrament will still be valid.

The matter and the form should be applied by one and the same minister. Baptism would not be valid if one poured the water while another pronounced the words. In the Eucharist, however, and in Extreme Unction there are more than one form, each with its separate matter, and the sacrament would be valid if one minister consecrated one species or anointed one sense and another finished the rite. This, however, is only lawful in case of necessity, nor is it lawful for many ministers to make one sacrament at the same time, except when newly ordained priests celebrate Mass with the bishop who has ordained them.

5. The sacraments should ordinarily be administered absolutely according to the manner in which they were

instituted by Christ. If, however, in any particular case it is doubtful whether a sacrament was validly administered and there will be danger of grave spiritual loss to the subject unless it is repeated, it may and should be repeated conditionally. The condition should be expressed when the rubrics require it, as in the case of Baptism and Extreme Unction. Otherwise the condition may be implicit, and it will be sufficient if the minister intend to do his duty according to the institution of Christ and the laws of Holy Mother Church.

The Ritual expressly warns the minister that the conditional form for administering Baptism is not to be used at random or lightly, but with prudence, when after diligent inquiry there is a probable doubt whether the sacrament was validly conferred before. The same principle is to be applied to the conditional administration of the other sacraments.

Except in the case of Matrimony, which is a contract and follows in this the rules affecting other contracts, a sacrament can not validly be administered under a condition which regards a future and uncertain event. The reason is because such a condition would of its nature suspend the effect of the sacrament, and when the condition is verified the matter and form no longer exist and can not now produce their effect. Thus Baptism conferred on a child under the condition, "If you attain the age of reason," would be null and void. On the other hand, a sacrament conferred under a past or present condition will be valid if the condition be verified; it will be invalid if the condition be not verified. We have already seen when it is lawful to administer a sacrament conditionally. There will be an obligation to do so whenever justice and

charity due to our neighbor require it in order to prevent his spiritual loss, or when reverence for the sacraments and for Christ, who instituted them, makes it necessary in order to avoid their invalid administration.

## CHAPTER III

### THE MINISTER OF THE SACRAMENTS

THE sacraments were instituted by Christ as so many channels or conduits by which he might convey to the souls of men the fruits of His passion and death. They are administered in His name and by His authority, and so Christ Himself is the principal minister of the sacraments. However, He deigns to make use of men as His instruments for administering them, and it is of these secondary ministers who make the sacraments in the name of Christ that we have here to treat. In Matrimony, as we shall see, the parties to the contract themselves are the ministers to each other of the sacrament, and any one who has the use of reason may confer Baptism validly. The minister of the other sacraments, at least for their lawful administration, must have the twofold spiritual power of order and jurisdiction which was given by Christ to His Church. We shall see when treating of the several sacraments how far order and jurisdiction are also required for their valid ministration. In the following sections we will lay down the conditions and dispositions which a minister of the sacraments should have to perform his office worthily.

### SECTION I

#### *The Attention and Intention of the Minister*

1. While administering a sacrament the minister should attend to what he is doing and remember that he is engaged

in a religious function. If he voluntarily allows his mind to wander on other and profane matters, he is guilty of irreverence toward God for whose worship the sacraments were instituted and should be administered. This irreverence, however, is not grave in itself, probably not even if a priest is voluntarily distracted during the consecration in Mass, so that voluntary distractions while administering the sacraments are only venial sins. Attention, then, or advertence of the mind to what is being done, is not necessary for the validity of a sacrament; only three things are necessary for its validity, as we saw above, the matter, the form, and the intention of the minister to do what the Church does.

2. Intention is an act of the will directing an action to a certain end. Divines distinguish between an actual, a virtual, an habitual, and an interpretative intention. When a minister wishes here and now to administer a sacrament, he has an actual intention to perform the rite. If he had such a wish and in consequence set about his task, but became distracted while administering the sacrament, he has a virtual intention. An habitual intention is a wish to do something, which wish has not been retracted but which does not issue in action. An interpretative intention is a wish which would be conceived if one thought of it, but for want of thinking of it it is not elicited.

An intention of some sort in the minister is necessary for the validity of a sacrament; the Council of Trent anathematized any one who should say that there is not required in ministers while they make and confer the sacraments at least an intention to do what the Church does.[1] Now the Church by her ministers and through the sacraments

[1] Sess. vii, c. 11.

baptizes, confirms, absolves from sin, and so forth; so that the minister while making a sacrament must intend to baptize, confirm, absolve. However, it is not necessary to have an actual intention of doing this; distractions can not always be avoided, and always to have an actual intention while engaged in conferring the sacraments would be an impossible requirement. Nor would an habitual intention suffice, for it does not exist while the action is put, nor has it any effect upon the action. Much less would an interpretative intention be sufficient. It remains, then, that a virtual intention is necessary and sufficient in the minister while he makes a sacrament.

3. Ambrosius Catharinus, Salmeron, Contenson, and other theologians thought that an intention to perform the external rite of a sacrament, even if the minister internally expressly withheld his intention to do what the Church does, would be sufficient for the validity of a sacrament. Such an intention to perform the merely external rite while internally withholding the intention to baptize, absolve, and so forth, is called an external intention. The common opinion is that such a merely external intention is not sufficient, but that an internal intention or a positive wish to baptize, absolve, and so forth, is necessary for the validity of the sacrament. On December 7, 1690, Alexander VIII condemned the proposition that Baptism is valid when it is conferred by a minister who observes all the external rite and form of Baptism but inwardly in his heart makes this resolution, "I do not intend to do what the Church does." This decree would seem to settle the matter, for it seems to have been directed against Fr. Farvacques, O.S.A., who in a little book published ten years earlier had defended the opinion of Catharinus and

Salmeron. A few theologians even subsequently to the decree of Alexander VIII have defended the same view, on the ground that the decree was aimed at the Lutheran error which asserted the validity of the sacraments even when administered in joke. No Catholic, however, defended the Lutheran doctrine at the time, and it had already been condemned by the Council of Trent. We must, then, at least say with Benedict XIV that the condemnation of the above proposition inflicted a serious blow on the opinion of Catharinus, and no theologian of note now defends it. The Church does not merely apply the matter and form when ministering the sacraments, but by means of those external rites she intends to do what Christ instituted the sacraments to effect, that is, to baptize, to absolve, and so forth. An intention then to do this, to baptize, to absolve, or an internal intention, is necessary for the validity of a sacrament.

4. It is not sufficient for the minister while making a sacrament to have a vague intention of conferring it on somebody or other, or of taking and applying some matter in general for the making of the sacrament. The intention must be definite in its scope and object, otherwise there is no reason why this matter should be taken rather than that, or why one person should be benefited rather than another. An intention, therefore, to absolve any one in a crowd who may need it, or to consecrate five hosts out of a larger number on the altar would not be effective.

Neither ignorance nor mistake on the part of the minister about the nature or effect of a sacrament makes it invalid. Baptism conferred by one who knows nothing of its nature, or by one who denies baptismal regeneration, is valid,

provided that the three essential elements of the sacrament are not wanting.

Difficulties may arise from the fact that a minister while making a sacrament had mutually contradictory intentions. Thus an heretical priest while saying Mass may have the intention to do what Christ instituted but not to offer sacrifice, as he denies that Mass is a sacrifice. In this and in similar cases divines give the following rules for discovering whether the sacrament is effected or not. When the contradictory intentions are present in the mind at the time of making the sacrament, that will prevail which is the stronger, and that is the stronger which would be chosen by the minister if he realized the contradiction. So that, in the example given, the heretical minister will actually say Mass if the intention to do what Christ instituted be the prevailing and stronger one; he will not say Mass if his intention not to offer sacrifice is the stronger. When the contradictory intentions follow one another, the last will ordinarily prevail, unless the former revoked all subsequent intentions.

5. Except in case of necessity the minister of a sacrament may not use probable opinions with reference to what belongs to the validity of the sacrament. As we saw when treating of the matter and form, it would be against the reverence due to the sacraments, against justice, and against charity, if the minister exposed the sacraments to the danger of nullity through following a merely probable opinion. He is bound to follow the safer opinion when he can do so in what relates to the validity of the sacraments. In questions, however, which only touch the lawfulness or the integrity of the sacraments, and when the Church supplies what is wanting in order that the sacrament may be

valid, which she sometimes does, as we shall see later, there is no reason why the minister should not use probable opinions. The same doctrine applies also to the recipient of the sacraments.

## Section II

### *The Faith and Holiness of the Minister*

1. Neither faith nor the state of holiness and friendship with God is necessary in the minister for the validity of the sacraments which he confers. This is of faith and it was defined by the Council of Trent. The sacraments do not depend for their effect on the good or bad dispositions of the minister, as they derive their efficacy from the institution and the merits of Christ. They produce their effect *ex opere operato,* not *ex opere operantis.* However, one who has been consecrated and deputed to be a dispenser of the mysteries of God is bound to fulfil his office in a worthy manner. Holy things must be treated holily. The minister acts in the name of Christ; he becomes the instrument of Christ for the sanctification of the souls of others by means of the sacraments; he would be greatly wanting in reverence and decency if while engaged in so holy a task his own conscience were stained with grievous sin. An enemy of God himself, he is guilty of great presumption in undertaking such holy functions. A consecrated minister who solemnly administers a sacrament while conscious of being in a state of mortal sin certainly sins grievously. The question whether a lay person who in case of necessity baptizes another or contracts marriage in the state of sin himself sins grievously, as being an unworthy minister of the sacrament, is much disputed among divines. Many

weighty authorities excuse such a minister from grave sin because he is not under so strict an obligation to put himself in the state of grace before administering a sacrament as is one who has been set aside and consecrated to that office. All citizens are bound to defend their country when threatened, but there is a special obligation to do so incumbent on those who, like soldiers, have undertaken that duty. Similarly, all should indeed treat the sacraments with proper respect, but consecrated ministers are specially bound to do so while fulfilling their office. So that it is a probable opinion that a lay person who baptizes in sin in a case of necessity, or one who marries and so ministers the sacrament in sin to the other party, does not thereby sin grievously. For the same reasons it is also probable that even a consecrated minister who while in sin administers Baptism privately in case of necessity does not sin mortally, for he then acts as a private person, not as a consecrated minister.

2. A priest who says Mass in the state of mortal sin is thereby guilty of several grievous sins. He celebrates Mass unworthily, he receives holy communion unworthily, and he gives himself the sacrament though he knows that he is unworthy to receive it. Some add a fourth sin, which is committed precisely by handling and administering the Blessed Sacrament in a state of sin. It is probable, however, that this last act, though wanting in due reverence, does not amount to a grievous sin. All the more is it a safe opinion that deacons and subdeacons who exercise their functions in a state of sin do not sin grievously by so doing, nor do bishops and priests who in sin consecrate or bless pious objects, or preach the word of God.

Divines are not agreed whether a priest would commit one sin or as many sins as he administered sacraments unworthily who in a state of sin should hear many confessions or administer many Baptisms or other sacraments at the same time. If there were moral interruptions between the several sacraments, there would at least be as many sins as interruptions. But if there were no such moral interruption, it is a probable opinion that a priest who at one time administers a sacrament to many only commits one big mortal sin. The sin takes its unity from the fact that he exercises his office on one occasion unworthily, an office which he was consecrated to perform in a worthy manner. It is not, then, necessary for a priest who has sinned by hearing confessions in sin to say how many persons he has absolved; it will be sufficient if he states how often he has heard confessions in mortal sin.

It will be sufficient for a priest who is in sin to make an act of contrition before administering any of the other sacraments, but before saying Mass and receiving holy communion it is necessary for such a one to go to confession. The Council of Trent, commenting on the precept of St. Paul, "Let a man prove himself, and so let him eat of that bread," says that the custom of the Church has always interpreted these words as implying that no one who is conscious of mortal sin ought to approach holy communion without sacramental confession, however contrite he may feel. It is, of course, advisable that this should be done before a minister who is in sin administers any of the sacraments, though it is only of strict obligation before saying Mass and receiving holy communion.

## Section III

### *The Duty of Administering the Sacraments*

1. All who have the cure of souls are bound in justice and in charity to administer the sacraments to the members of their flock when these need them or ask for them reasonably. The obligation is principally one of justice, and it arises from the implicit contract which those who have the cure of souls enter into on assumption of office. The obligation is a grave one if the subject is in extreme or grave necessity, and even when there is no grave necessity one who has the cure of souls would commit serious sin if he frequently refused the sacraments to those who ask for them reasonably. An occasional refusal in such cases would not be a grievous sin, as although the spiritual good of which they are unjustly deprived is considerable, yet the loss can without much inconvenience be made good at another time.

The obligation of justice is so strict that those who have the cure of souls are bound even at the risk of life to administer the sacraments to their flock in extreme or in grave necessity. This obligation, however, only extends to those sacraments which are necessary for salvation, such as Baptism and Penance; it does not extend to those which are not necessary, not even to the Holy Eucharist, according to a very probable opinion. Mortal sin will be committed not only by frequent refusal of the sacraments to those who ask for them in a reasonable manner, but also by making one's self difficult to approach and by an ungracious manner of yielding to reasonable requests, inas-

much as such methods deter the faithful from exercising their just rights.

2. Ministers of the sacraments who have not the cure of souls are bound in charity to administer the sacraments to such as are in extreme or grave spiritual necessity. This obligation is less strict than that which lies on those who have the cure of souls, so that those who have no such cure will only be bound at the risk of life to administer the sacraments which are necessary for salvation to those who are in extreme necessity. But in order that this grave obligation of charity may exist there must be moral certainty that the person in question is in extreme spiritual necessity, or in other words, that he is in proximate danger of damnation unless the sacraments be administered. There must also be a reasonable certainty that the attempt to administer the sacraments will be successful; it would be hard if a minister of the sacraments were bound to imperil his life for a mere probability of being able to help another in spiritual distress. Furthermore, before so grave an obligation can be imposed on any one it must be morally certain that he who is in spiritual necessity is unable to help himself by making an act of contrition for his sins or of perfect love of God, and that there is no one else who is able and willing to succor him in his necessity. As all these conditions are seldom verified in any concrete case, it is apparent that those who have not the cure of souls will seldom be under a grave obligation of administering the sacraments to those who are in extreme necessity at the risk of life.

## Section IV

### *The Duty of Refusing the Sacraments to the Unworthy*

1. "Let a man so account of us," says St. Paul, "as of the ministers of Christ, and the dispensers of the mysteries of God. Here now it is required among the dispensers, that a man be found faithful." [1] As, then, the administration of the sacraments is entrusted to the ministers of the Church, they must be faithful to their charge and administer them according to the intention of Christ and the rules of the Church. These rules are chiefly contained in the Ritual and in other liturgical books. The prescribed rites are of grave obligation in serious matters, for the Council of Trent anathematized those who should assert, "That the received and approved rites of the Catholic Church, wont to be used in the solemn administration of the sacraments, may be contemned, or without sin be omitted at pleasure by the ministers, or be changed by every pastor of the churches into other new ones." [2]

Ministers are specially required to refuse the sacraments to such as are unworthy: "Give not that which is holy to dogs," said our blessed Lord.[3] The minister should have positive reasons for judging that those who ask for the sacraments of Penance and Orders are worthy to receive them. For the dispositions of the subject enter into the substance and validity of Penance, and the duty of seeing that everything is present which is required for the validity of the sacraments belongs to the minister of them. Public officials of the Church are constituted by Orders, and

[1] 1 Cor. iv. 1, 2. [2] Sess. vii, c. 13. [3] Matt. vii. 6.

the public good requires that only those who are worthy should be chosen. All lawful subjects who ask for the other sacraments are presumed to be worthy unless it is certain that they are unworthy.

With special reference to the Holy Eucharist the Ritual lays down that, "All the faithful are to be admitted to holy communion except those who are forbidden for just cause. Those who are notoriously unworthy are to be refused, such as the excommunicated, interdicted, and openly infamous, as are strumpets, those living in concubinage, usurers, wizards, sorcerers, blasphemers, and other public sinners of that kind, unless it is certain that they have repented and amended, and have made satisfaction for the public scandal which they have given." However, in the judgment of theologians, it will be sufficient if such public sinners openly go to confession; in this way according to modern discipline they will show their amendment and make satisfaction for the scandal which they have caused, unless more is required in special cases by the bishop or by other competent authority.

The Ritual proceeds: "Let the minister also repel secret sinners when they ask in secret unless he knows that they have amended; but not when they ask publicly, and can not be passed by without scandal." In the latter case public injury would be done to the secret sinner, scandal would be given to others, and other inconveniences would follow, if the sacraments were refused; and these reasons justify the minister in co-operating materially with the sin of unworthily receiving the sacraments. Of course, if the minister only knows of the bad dispositions of the subject from sacramental confession, he can make no use of his knowledge out of confession.

2. It is specially laid down in the synods[1] that the priest should strive to induce all who are going to marry to approach beforehand the sacraments of Penance and the Holy Eucharist. If he does not succeed in this, he may nevertheless assist at the marriage even though he knows that one or both parties are not properly disposed to receive the sacrament, for he is not the minister of Matrimony, but only the witness authorized by the Church to assist at it and to bless the parties; to refuse to assist would commonly do more harm than good. Even if one of the contracting parties knows that the other is not in a fit state to receive a sacrament of the living like Matrimony, still he will as a rule be excused from sin in ministering the sacrament to him, because he is not a consecrated minister of the sacrament, and the advantages connected with marriage are a sufficient justification for co-operating materially with the sin committed by the other party by receiving the sacrament in a state of sin.

3. If one who is unworthy were to demand the administration of a sacrament out of contempt for the Faith or to show his hatred for religion, the minister would be bound to refuse it even at the risk of his life. He must protect the sacraments which have been committed to his care from so great an indignity — which indeed would redound on God Himself — even at the risk of life. Whether a minister at the risk of his life would be bound to refuse a sacrament to one who was unworthy and who demanded its administration with threats of death in case of refusal, not indeed out of contempt or hatred of the Faith, but for some other reason, is a disputed point among theologians. It is at any rate a probable opinion that

[1] I West. d. 22.

the minister would not be bound to expose his life to danger, but that he might administer the sacrament to save himself, as we saw above that he might administer it to a secret sinner to avoid scandal.

4. Innocent XI condemned the proposition that instant and grave fear is a just cause for simulating the administration of the sacraments.[1] From this it follows that not only formal simulation with the intention of deceiving others is wrong, as being a lie in action, but even material simulation of administering a sacrament, whereby the matter or the form of a sacrament is used without the making of the sacrament, is not justified by grave fear. The minister may not give an unconsecrated host to a sinner as communion, or fictitiously absolve a penitent even to avoid death. The reason is because by so doing he would abuse a holy rite, instituted by Christ, and thus be guilty of gross irreverence toward God. It is a less sin for a priest to celebrate unworthily than to pretend to say Mass and not consecrate. However, a priest who instead of absolving a penitent who is not worthy of absolution dismisses him with a blessing so as not to betray him to people who are looking on, does not simulate the administration of the sacrament in the technical sense, and he does nothing reprehensible. He does not make an irreverent use of the sacramental sign or of part of it without completing the sacrament, in which the essence of the simulation of the administration of a sacrament consists in so far as it is wrong and has been condemned by the Church.

[1] Prop. 29.

## CHAPTER IV

### THE RECIPIENT OF THE SACRAMENTS

1. The sacraments were instituted to sanctify the souls of men and thus to prepare them for heaven. Only living men then can validly receive the sacraments; dead men or other beings can not receive them validly. Death takes place when the soul is separated from the body, but we do not know the precise moment when that separation takes place. Except putrefaction, there are no absolutely certain signs of death, and it is quite probable that the soul remains united to the body for some time after all apparent signs of life have disappeared. Under these circumstances recent medical men and divines hold that it is lawful to administer the last sacraments to one who has to all appearances been dead for an hour or two. This is especially the case when death is the result of some sudden accident. Men only, not women, are capable of receiving the sacrament of Orders, and only those who have committed actual sins after Baptism can validly receive the sacrament of Penance. As the sacraments were instituted for the Church of Christ, of which men become members by Baptism, this sacrament is a necessary condition for the valid reception of the others.

2. No special disposition or intention is required on the part of infants who have not come to the use of reason and of imbeciles for the validity of the sacraments which

they are capable of receiving. As they have not the use of reason they are incapable of disposing themselves for the reception of the sacraments, and yet the Church has been accustomed to give them the sacraments. The practice of the Church in such matters has the very greatest authority, as the Angelic Doctor says: "The custom of the Church has the greatest authority, and it should always be followed in all things, because even the teaching of Catholic Doctors receives its authority from the Church. So that we must rather stand by the authority of the Church than by the authority of Augustine or Jerome or of any Doctor soever." [1] With reference to infant Baptism, the Council of Trent passed the following decree: "If any one saith that little children, for that they have not actual faith, are not, after having received Baptism, to be reckoned amongst the faithful; and that for this cause they are to be rebaptized when they have attained to years of discretion; or that it is better that the Baptism of such be omitted than that while not believing by their own act they should be baptized in the faith alone of the Church; let him be anathema." [2]

3. On the other hand, God does not sanctify adults who have the use of reason without some co-operation on their side; justification, says the Council of Trent,[3] is the sanctification and renewal of the interior man by the *voluntary* reception of grace and the gifts of the Holy Spirit. Some wish, desire, or intention to receive a sacrament is, then, necessary on the part of adults for its validity. A positive refusal to receive a sacrament, or a neutral state of mind neither willing nor refusing it, would make

[1] Summa, 2–2, q. 10, a. 12. [2] Sess. vii, c. 13, de Bapt.
[3] Sess. vi, c. 7.

the reception of a sacrament null and void. The kind of intention which is necessary and sufficient for the validity of a sacrament varies according to its nature. In Penance and Matrimony a virtual intention is required in the subject, as it is required in the minister. For in Penance the acts of the penitent enter into the substance of the sacrament, and so they must be directed by him to its confection. Matrimony is constituted by the mutual consent of the parties, and for this at least a virtual intention is necessary. In Baptism and Orders, which imply the undertaking of serious obligations by those who receive them, an habitual intention is required in order to be baptized validly; in other words, the person baptized must have at some time intended to receive the sacrament and not revoked his intention afterward. It is a disputed point among divines whether an habitual and express intention is necessary or whether an implicit intention contained in a desire to do all that God has ordained, or in an act of perfect charity or contrition, is sufficient. The latter opinion is probable, and it may be used in case of necessity when one is in danger of death, and then only. For the other sacraments, which confer benefits without imposing any great burden, a general or implicit intention, such as is contained in a desire to die like a Catholic with all the rites of the Church, is sufficient for their validity.

Those, therefore, who are asleep, or are unconscious, can receive the sacraments validly, for they may have all the dispositions which are necessary. The only difficulty is about Penance, but, as we shall see, it is at least a probable opinion that absolution is valid when given to one who is unconscious, but otherwise disposed for

the sacrament. However, it is not lawful to administer the sacraments to those who are asleep, unconscious, or out of their mind, except when in danger of death. For the subject should be in a fit state to dispose himself for the reception of the sacraments so that he may receive them with due reverence and fruit.

4. Except in Penance, neither faith nor good dispositions are required for the validity of the sacraments, as is clear from the practice of the Church, which is not accustomed to repeat sacraments received in heresy or in bad dispositions. However, the state of grace is necessary for the lawful reception of the sacraments of the living, as we have seen; and for those of the dead, faith, hope, and sorrow for sin are necessary, as the Council of Trent teaches that they are for the justification of the sinner.[1] Furthermore, for the lawful reception of the sacraments the subject must be free from all censures which deprive him of the right to receive them.

It follows from this that heretics and schismatics even when baptized may not lawfully receive the sacraments at the hands of Catholic ministers, as a general rule. The sacraments are intended for those who are visibly members of the Catholic Church, and they alone have the right to receive them. If any one else wishes to receive them, let him enter the visible Church of God. However, it is a disputed point whether the sacraments may be lawfully administered to a schismatic or heretic who is in good faith, and who is in danger of death. Although St. Alphonsus and others deny that it is lawful to absolve such a person, yet the opposite opinion has its supporters, and it is in keeping with several decrees of the Roman

[1] Sess. vi, c. 6.

Congregations, as for example that of the Holy Office, July 20, 1898.[1]

The faithful are not prohibited from asking for the sacraments from ministers who they know lead bad lives, if they have good reason for so doing. Sin, indeed, is committed by the minister if he administers a sacrament while in sin, but if he does so his malice must be imputed to himself, not to those who for good reason exercise their right to receive the sacraments. Moreover, the malice of the minister can not affect the sacraments.

Although in extreme necessity a Catholic may receive the sacraments from schismatical ministers, yet scandal to be avoided rarely permits of its being done, as Benedict XIV teaches.[2]

In the East the faithful may confess to any Catholic priest of any rite who has faculties for confession; and if there be only one Church in the place they may receive holy communion according to the rite in use therein Otherwise, all should receive the sacraments according to the rite to which they belong.

[1] Analecta Ecclesiastica, 1898, p. 387.
[2] De syn. vi, c. 5, n. 2.

# BOOK II

## BAPTISM

### CHAPTER I

#### THE NATURE OF BAPTISM

1. The first of the sacraments, the door by which men enter into the Church of God, by which they are made her children and the sons of God, is Baptism. The Catechism of the Council of Trent defines Baptism as the sacrament of regeneration by water in the word. This is but expressing in other words what Our Lord said to Nicodemus, "Unless a man be born again of water and the Holy Ghost he can not enter into the kingdom of God." [1] The new birth which takes place in Baptism is the new life of grace which is given to the soul by the sacrament, and by this vivifying grace the soul which was dead to God lives to Him with a supernatural life.

Baptism then is a total washing of the soul from the stains of sin, both original and actual, if any have been committed, and a complete canceling of all the debt of punishment which may be due to sin. This is brought about by the infusion of sanctifying grace into the soul, together with the habits of the theological virtues of faith, hope, and charity. Moreover, by Baptism a character is imprinted on the soul by which it is known to God and

[1] John iii. 5.

His angels as that of a baptized Christian; and the person baptized becomes a member of the Church, a child of God, and heir to the kingdom of heaven.

2. By the positive will of Jesus Christ Baptism is necessary for salvation, as may be gathered from the words quoted above. This truth was defined by the Council of Trent,[1] "If any one saith that Baptism is optional, that is, not necessary unto salvation: let him be anathema." Without Baptism, then, it is impossible to be saved, not merely because Christ commanded all to receive this sacrament, but because it infuses sanctifying grace into the soul, that nuptial garment without which no one can be admitted to the beatific vision. If, however, for one cause or another it is not possible to receive the Baptism of water, its place may be supplied by an act of perfect contrition or of the pure love of God, and by martyrdom. On this account Baptism is said by theologians to be threefold: the Baptism of water, the Baptism of desire, and the Baptism of blood.

Perfect conversion to God by contrition for sin or by charity certainly infuses sanctifying grace into the soul and forgives sin, as Holy Scripture frequently declares, and as the Council of Trent teaches.[2] In this, therefore, its effect is similar to the primary effect of Baptism and it is rightly called the Baptism of desire. Still, after the promulgation of the New Law the Baptism of desire only produces its effect because explicitly or implicitly it contains a desire and a purpose to receive the Baptism of water, should occasion offer. Although the Baptism of desire reconciles the sinner to God, yet it does not imprint any character on the soul, nor does it necessarily remit

[1] Sess. vii, c. 5, de Bapt. [2] Sess. xiv, c. 4.

all the temporal punishment due to sin. The extent to which it does this will depend on the intensity of the act.

Martyrdom also, or death patiently endured for the sake of Christ or for some Christian virtue, has the same effect as the Baptism of desire. "Greater love than this," said our blessed Lord, "no man hath, that a man lay down his life for his friends." [1] Still martyrdom does not produce its effect simply as an act of love, but in a manner *ex opere operato,* by a special privilege, as being an imitation of the passion and death of Christ. Thus the Church honors as saints in heaven the Holy Innocents and other children who have been put to death for the sake of Christ. In the case of adults who have committed sin there must at least be attrition for sin in order that martyrdom may produce its effect as a kind of Baptism.

[1] John xv. 13.

## CHAPTER II

### THE MATTER AND FORM OF BAPTISM

1. The remote and valid matter of Baptism is natural water in a suitable state for washing one's self. It is quite immaterial whether the water be spring water, rain water, sea water, or water from a river or pond; but frozen water is doubtful matter until it is melted, because it is not suitable for washing one's self; while mud is invalid matter.

For solemn Baptism the Church prescribes the use of water specially consecrated for the purpose, and the same may be used for private Baptism, as also may holy water and common water. For the private Baptism of adults who have been converted from heresy and require to be baptized conditionally, the First Synod of Westminster prescribes the use of holy water.

Note. — What is here prescribed by the First Synod of Westminster, *viz.*, the use of holy water in the private Baptism (conditional) of adult converts from heresy, does not apply to the United States. — End of Note.

The proximate matter of the sacrament is its use or application in the act of baptizing. This may validly be done either by infusion, or immersion, or sprinkling, provided that the water touches the head of the person to be baptized and flows so as to express the action of washing. In the Western Church, however, a triple pour-

ing of water on the head of the person to be baptized, or a triple immersion, if such be the custom, is prescribed by the rubrics of the Ritual. Care should be taken that the water touch the skin, as the Baptism would be of doubtful validity if it merely touched the hair. Merely to lay the wet hand or finger on the skin would not be valid Baptism, and even if the wet finger were moved over the skin the validity would still be doubtful.

2. The form of Baptism is: "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost." Any change in this form which altered the sense would also invalidate the Baptism, as if one should say, "I baptize thee in the name of Christ," or, "of the Blessed Trinity." The form should be pronounced by the minister while he pours the water, and it is clear that if one pronounced the words while another poured the water, or if one baptized one's self, the Baptism would be invalid.

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## CHAPTER III

### THE MINISTER OF BAPTISM

1. The ordinary minister of solemn Baptism is a priest, but as it is a parochial sacrament, its lawful administration belongs exclusively to the parish priest or to the priest who has the cure of souls in the district in which the parents of the child have their domicil. Such priest may of course delegate authority to any other priest to baptize in his name; if there is reasonable cause, as in case of illness or constant occupation in hearing confessions, he may commission a deacon to give solemn Baptism.[1] The children of strangers or of those who are without fixed home may be baptized in the church which they elect for the purpose.

In case of necessity, when there is danger of some one dying without Baptism, any one who has the use of reason may baptize without the ceremonies. In such cases of necessity the Ritual prescribes that a priest should be preferred to a deacon, a deacon to a subdeacon, a cleric to a lay person, a man to a woman, unless the latter be preferred for the sake of decency or because she is better acquainted with the method of valid Baptism. Those who have the cure of souls should take care that the faithful, especially midwives, are instructed in the right method of administering Baptism. The Ritual also prescribes that a father or mother should not baptize their own child

[1] If it can be done easily and without delay, a stranger (*peregrinus*) should be baptized by his parish priest in his own parish. Otherwise any parish priest in his own parish may baptize a stranger. C.J.C., can. 738, sec. 2.

except when it is in danger of death and no one else can do so, and then the parent who baptizes does not contract spiritual relationship with the other parent of the child.

2. The ceremonies prescribed for solemn Baptism are of grave obligation, so that it would be a mortal sin to omit without necessity a notable part of them, as, for example, the anointings, or the use of consecrated water. The child is anointed with the oil of catechumens before the actual baptizing, and afterward with the chrism. The holy oils should be kept carefully separated and they should be renewed every year when the oils are consecrated by the bishop on Maundy Thursday. The baptismal font, too, should be blessed on Holy Saturday with the oils consecrated on the previous Thursday. If they have not arrived in time the font should be blessed without them and they should be added afterward, unless in the meantime some one has to be baptized, and then the old oils may be used in blessing the font. If the oils threaten to be exhausted, fresh, unblessed olive oil may be added always in smaller quantity. The same rule may be followed with regard to the consecrated water in the font. The Ritual admonishes the parish priest to take care that as far as possible names of saints should be given in Baptism, so that by their example the baptized person may be moved to live holily, and that he may hope to enjoy their patronage. In solemn Baptism the Latin language should be used, but certain portions may also be rendered in the vernacular, according to the Ritual approved for use in the country.

3. Baptism should ordinarily be administered in the church to which is attached the cure of souls and in which

there should be a baptismal font. It is not lawful to baptize outside the church except in case of necessity, and then if the child survive, the ceremonies should afterward be supplied in the church. With the bishop's leave Baptism may also be given to royal children and to the children of great nobles in their private chapels,[1] and also in remote stations when the church is too distant for tender children to be taken thither. In places where there are not even such stations, as sometimes in the missions, Baptism may be given in private houses but with all the ceremonies.

NOTE. — The law still prevailing in the United States regarding the administration of Baptism outside the church is found in the Second Plenary Council of Baltimore (N. 237) as follows: "*Præcipimus ne umquam sacerdotes extra ecclesiam hoc sacramentum conferre audeant, præter mortis imminentem casum, in urbibus unam aut plures ecclesias habentibus. Qui ruri degunt, aut in pagis et oppidulis, ubi nulla est ecclesia, infantes ad ecclesiam propinquiorem vel stationem, in qua Sacrum fieri solet, baptizandos adducant. Quod si ob aeris intemperiem, itineris difficultatem, parentum inopiam, vel alias graves causas hoc fieri nequeat, tunc missionarii prudentiæ et conscientiæ relinquimus, ut eos domi cum omnibus Ecclesiæ cæremoniis baptizet.*" — END OF NOTE.

Adults should be baptized according to the longer form in the Ritual unless a special indult has been granted to use the shorter form, as is sometimes done.

NOTE. — Among the petitions presented to the Hol See by the Fathers of the Second Plenary Council of

[1] The children of great nobles have now no special privilege as to the place of their baptism. C.J.C., can. 776, sec. 1, 1°.

Baltimore (1866), one was that in the Baptism of adults the shorter form prescribed for infant Baptism might be employed for ten or twenty years. The answer was: "S. Cong. *censuit Episcopos recurrere debere, expleto tempore postremæ concessionis.*" In 1830 the bishops of the United States had procured for twenty years the faculty of using the formula for infant Baptism in the Baptism of adults. This faculty was renewed for five years on the occasion of the confirmation of the First Plenary Council of Baltimore in 1852. In 1859 the bishops of the ecclesiastical province of St. Louis in their Second Provincial Council asked for the faculty "*usque dum S. Sedes aliter statuerit,*" and the petition was granted "*juxta preces,*" though it would seem with some reluctance, for the bishops were told "*Interim curent de inducenda formula pro adultis a Rituali Romano præscripta.*" It may be remarked that the province of St. Louis at that time (1859) comprised Missouri, Illinois, Indian Territory, Iowa, Kansas, Minnesota, New Mexico, Nebraska, Oklahoma, Tennessee, and Wisconsin, so that the privilege exists to-day in all the dioceses included within the boundaries of those States, since the Holy See has never withdrawn it. At present quite a large number of dioceses besides those belonging to the province of St. Louis as constituted in 1859 possess the same faculty. Still it does not exist in every diocese of this country. Thus in the statutes of the archdiocese of New Orleans the following enactment is found: "*Statuimus ut pastores præscripta formula (baptizandi adultos) utantur, nisi obstet grave incommodum;*" and the archbishop of New Orleans recently stated that he possesses no indult regarding the formula for the Baptism of adults. — End of Note.

Those who have attained the use of reason are their own masters in the things of God, and are considered adults with reference to Baptism.

NOTE. — The S. Cong. of Propaganda issued the following decree (March 3, 1703): "*Possunt baptizari, etiam invitis parentibus, pueri adulti qui Baptismum desiderant: adultus autem censetur qui septennium complevit, regulariter loquendo.*" It does not follow, however, that such children (seven years old) while considered adults for receiving Baptism without the consent of their parents should be baptized according to the form of Baptism for adults until they reach the age of puberty. Holy Office, May 10, 1879. Cf. Anal. Eccles., vol. 5, p. 482. — END OF NOTE.

Adults who have been converted from heresy and require conditional Baptism are to be baptized privately with holy water and without the ceremonies, according to the First Synod of Westminster.

NOTE. — There is no permission in the United States to follow the practice here mentioned for England. On the occasion of the Second Plenary Council of Baltimore, the Fathers petitioned the Holy See that, when admitting into the Church adult heretics whose Baptism was doubtful, the ceremonies of solemn Baptism might be omitted and holy water be used for conditional Baptism. The petition, however, was not granted, as appears from the Instruction of the Prefect of the Propaganda sent to the Bishops of the United States, January 24, 1868: "*Supplicarunt* n. 264, *ejusdem capitis, uti apud eos morem inducere liceat qui apud Anglos viget, baptizandi sub con-*

*ditione privatim, cum aqua tantum lustrali, et absque cæremoniis, adultos ab hæresi ad Ecclesiam conversos, de quorum baptismate prudenter dubitatur. Quoad hoc postulatum, S. C. censuit respondendum, pro nunc non expedire.*" — End of Note.

Infants, however, who require conditional Baptism should be baptized secretly but with the ceremonies according to a decree of the Holy Office, April 2, 1879.

Note. — The decree to which the author refers was an answer to a question proposed by the Bishop of Nottingham in England regarding infants doubtfully baptized in Protestantism: "*An liceat sub conditione baptizare publice, et cum suis cæremoniis parvulos rationis expertos, qui in protestantismo dubie et sine cæremoniis jam baptizati, sub conditione baptizari debent?*" Resp. — "*Baptismum sub conditione parvulis, de quibus in precibus, in casu administrandum esse secreto, et cum cæremoniis in Rituali Romano præscriptis.*" It does not follow from this reply that secrecy is to be observed when infants of Catholic parents have been doubtfully baptized for some cause or other, for example, those baptized *in utero*, and afterward receive conditional Baptism. Even in regard to infants doubtfully baptized in Protestantism, it seems probable that this decree was not intended to express any universal law of the Church, but rather a particular ordination obligatory in the diocese of Nottingham and perhaps throughout England, but not in a country like the United States where, speaking generally, there would be no special reason demanding secrecy in the administration of conditional Baptism to infants doubtfully baptized in some Protestant sect. It is well known that the Roman Con-

gregations, including the Holy Office, not unfrequently issue decrees binding upon those to whom they are directed, but not of universal obligation. Cf. Wernz, Jus Decretalium, vol. 2, n. 659. — End of Note.

## CHAPTER IV

### THE SPONSORS

1. Sponsors according to ecclesiastical law are used in solemn Baptism to answer for the child baptized, to hold him during Baptism, or to receive him immediately after Baptism from the hands of the minister, and to act as his instructors in the Faith which he received and professed in Baptism. With regard to those who have Catholic parents, the sponsors may ordinarily presume that the Catholic education of the child will be sufficiently provided for by them; but otherwise the sponsors will be bound as far as possible to provide for it. Sponsors may be employed in private Baptism, but there is no obligation of doing so.

2. The Council of Trent ordained, "that in accordance with the appointments of the sacred canons, one person only, whether male or female, or at most one male and one female, shall receive in Baptism the individual baptized; between whom and the baptized, and the father and mother thereof, as also between the person baptizing and the baptized[1] and the father and mother of the baptized, and these only, shall spiritual relationship be contracted. The parish priest, before he proceeds to confer Baptism, shall carefully inquire of those whom it may concern, what person or persons they have chosen to receive from the sacred font the individual baptized; and he shall allow him or them only to receive the baptized; he shall

[1] Spiritual relationship is now not contracted with the parents of the person baptized either by him who baptizes or by the sponsors. C.J.C., can. 768.

register their names in the book, and teach them what relationship they have contracted, that they may have no excuse on the score of ignorance. And if any others besides those designated should touch the baptized, they shall not in any way contract a spiritual relationship, any constitutions that tend to the contrary notwithstanding."[1]

The formal inquiry as to who have been chosen for the office of sponsors which the council here prescribes is probably not necessary for the validity of the assumption of the office; it will be sufficient for the validity if the sponsors have the use of reason and intend to assume the office, if they are themselves baptized, and if during Baptism or immediately afterward they physically touch the person baptized. One usually holds the child over the font on his or her right arm, while the other lays his right hand on the shoulder of the child.

3. The following are prohibited by the Church from being admitted as sponsors: the parents of the person baptized, if both are living, heretics, those who are excommunicated or interdicted, public criminals or people without reputation, those who are ignorant of the rudiments of the Faith, and members of Religious Orders. Others are sometimes prohibited by provincial law, as the following in England: those who have not reached the age of puberty, those who have not been confirmed or who have not made their Easter duties, and ecclesiastics.

Note. — In the United States there is no general prohibition against admitting as sponsors those who belong to any of the four classes here mentioned. The Second Plenary Council of Baltimore (n. 231), referring to the

[1] Sess. xxiv, c. 2, de Ref.

qualifications of sponsors, quotes the Roman Ritual: "*Patrinos saltem in ætate pubertatis, ac sacramento Confirmationis consignatos esse maxime convenit. Sciant præterea parochi* (*quod et de sacerdotibus omnibus qui baptismum administrant intelligendum est*), *ad hoc munus non esse admittendos infideles, aut hæreticos: non publice excommunicatos, aut interdictos: non publice criminosos, aut infames: nec præterea, qui sana mente non sunt: nec qui ignorant rudimenta fidei: hæc enim patrini spirituales filios suos quos de baptismi fonte susceperint, ubi opus fuerit, opportune docere tenentur.*" While it is highly becoming according to these words that sponsors should have reached the age of puberty and have received the sacrament of Confirmation, it is not strictly obligatory. Those who have neglected their Easter duties are not necessarily to be excluded from the office of sponsor; but may sometimes belong to the class of *Infames*, and, if so, can not be admitted. — End of Note.

One may be sponsor by proxy, and then the principal, not the proxy, contracts spiritual relationship with the persons mentioned in the above extract from the Council of Trent. If sponsors are used in private Baptism, it is a disputed point whether they contract spiritual relationship, and both the affirmative and negative opinions are probable.

## CHAPTER V

### WHO MAY BE BAPTIZED?

1. ANY living human being who has not yet been baptized is capable of receiving this sacrament. If he has the use of reason, an habitual intention at least to receive Baptism is necessary for its validity, though, as we saw above, it is probably sufficient if it be implicitly contained in a wish to do all that God requires, or any similar act of the will. In children who have not attained the use of reason and in imbeciles no intention is required for the reception of Baptism; the intention of the Church supplies for it.

For the lawful reception of this sacrament by adults who have the use of reason all those dispositions are necessary which, as the Council of Trent teaches,[1] are required for the justification of the sinner. They must, then, have faith, and believe all those truths which God has revealed and which the Church proposes to our belief. In particular they must know and believe explicitly the being of God, that He rewards and punishes men according to their deserts, the Blessed Trinity, the Incarnation, the Apostles' Creed, the Decalogue, and the Lord's Prayer. In other words, they should be properly instructed in the catechism. They should also approach the sacrament with hope, and at least with that kind of sorrow for sin which is called attrition.

[1] Sess. vi, c. 6.

2. Catholic parents are bound to see that their children are baptized, and that as soon as can conveniently be done. According to approved theologians it would be a serious sin if the Baptism of a child were put off for a month without good reason. As Catholic parents are subjects of the Church, and they are bound to obey her laws, no injustice would be done if a child of such parents were baptized without or against their wish. Non-baptized parents are not subject to the Church, and, as St. Thomas teaches, it would be against natural justice if an infant of theirs who is in no danger of death were to be baptized without their consent. When a non-baptized child is in danger of death the necessity of providing for its eternal salvation overrides all other private considerations.

When a child comes to the use of reason he becomes his own master in the things of God and absolutely he may ask for and receive Baptism without the consent of his parents. Still in practice great caution is needed in such a matter. Of course, if the parents agree to allow the child to be brought up a Catholic, and it has Catholic sponsors, the difficulty will cease. But if it is baptized against their will, and remains subject to their control in other respects, the faith of the child will be in constant danger, especially as it can hardly be very firmly established before mature age. Ordinarily, then, children should not be baptized without their parents' consent until they reach an age when their convictions are firmly rooted and there is every prospect of their perseverance.

3. It would be a grave sin knowingly to baptize again one who has already been validly baptized. So that when a child has been baptized by a nurse or midwife by reason of apparent danger of death, inquiry should indeed be

made as to the manner of the Baptism, but if the matter and form were rightly applied the Baptism must not be repeated; only the ceremonies must be supplied in the Church. In case of doubt concerning the validity of the former Baptism, it should be repeated conditionally.

When heretics are converted to the Faith, inquiry should be made in every case concerning their Baptism. If it is found either that they were never baptized, or that the Baptism was invalid, they must be baptized again absolutely. If after inquiry a prudent doubt remains as to whether they were ever baptized, or as to whether their Baptism was valid, they should be baptized again conditionally, and in secret so as to avoid scandal.

Note. — As stated before regarding the United States, when adult heretics, whose Baptism is doubtful, are received into the Church, the ceremonies prescribed by the Roman Ritual are to be observed. Hence the formula for adults is to be employed, unless there be an indult for the use of the form for infants. In this country, there appears, speaking generally, no reason requiring secrecy in giving conditional Baptism, as there would be no danger of scandal, since it is well known that there is no attempt at re-Baptism, properly so called, but a well-grounded doubt regarding the validity of the former Baptism. — End of Note.

If it is found that their Baptism was valid, they should only abjure their errors, and make a profession of the Catholic faith.

4. An aborted fetus, if it is still living, should be baptized, rupturing the membranes if necessary, and pouring

water over it while at the same time pronouncing the form of Baptism.

The Ritual admonishes ministers of the sacrament to be cautious about baptizing monsters. If a monster has not a human shape, but is a mere mass of fleshy growth, it should not be baptized at all. If there are two heads and two bodies, there are two persons, and both should be baptized, separately if there is time, otherwise under a common form. If it is doubtful whether there are two persons or only one, Baptism should be given absolutely to one, and again conditionally to the other, under the form, "If thou art not baptized, I baptize thee," and so forth.

The Ritual also prescribes that if a woman dies in pregnancy the fetus should be extracted, and if still living should be baptized. This, of course, supposes that there is a skilled person present who judges that the fetus is still alive, and who is capable of performing the necessary operation.

NOTE. — A priest, however skilled he may be in surgery, is not bound to perform the operation of extracting the fetus; the better opinion is that it is not lawful under any circumstances for him to perform it. The Holy Office, February 15, 1780, published the following decree: "*Hæc autem fetus extractio de prægnantis defunctæque alvo matris, quamvis patefacienda, ut dicimus, ac persuadenda sit, expresse tamen cavet, prohibetque Sanctitas Sua, ne missionarii in casibus particularibus se ingerant in demandanda sectione, multoque minus in ea peragenda. Sat proinde missionariis fuerit illius notitiam edidisse, curasseque ut ejus perficiendæ rationem perdiscant qui chirurgis intendunt, laici homines, tum vero, cum casus tulerit, ejusdem praxim ipsorum oneri ac muneri reliquisse.*" When some questions were proposed more recently on this subject, the Holy Office

replied, December 13, 1899, by only citing the decree given above. See Anal. Eccles. vol. 8, p. 54, 55. While the response of the Sacred Congregation on both occasions (in 1780 and 1899) was given for particular places under somewhat special circumstances, one may infer without much hesitation that a priest should never perform this operation. It may be added that the civil law usually imposes a penalty upon any one, except a licensed practitioner, attempting the operation. Scandal, too, would generally occur, and much detriment to religion would follow if a priest were to perform it. — End of Note.

The question also occurs whether a mother, who is still living but who can not bring forth her child alive, is bound to undergo a serious operation like Cesarian section in order to insure the eternal welfare of her child by Baptism. Of course she may not undergo the operation if it would be the immediate cause of her own death. The mother must not be killed even for the salvation of the child. Even if her health and condition are such that in all probability she could stand the operation, yet it is probable that she is under no obligation to submit to it. The child can with sufficient certainty be baptized in the womb, and even if the operation were performed, greater certainty that the child would still be alive and capable of Baptism can seldom be obtained. In such circumstances no strict obligation to undergo a serious operation can be imposed on the mother.

# BOOK III

## CONFIRMATION

### CHAPTER I

#### THE MATTER OF CONFIRMATION

1. Confirmation is a sacrament by which a baptized person receives grace boldly to profess and defend the Faith which he received in Baptism. It is, then, complementary to Baptism; as Baptism makes a man a follower of Christ, Confirmation makes him a soldier of Christ. It is a sacrament of the living, and gives an increase of sanctifying grace to the soul together with the right to receive those actual graces which will be needed to resist temptation and to lead a good Christian life. It is also one of the three sacraments that imprint a character on the soul.

2. Divines are not agreed as to what constitutes the matter of Confirmation. Some hold that the general imposition of hands by the bishop who confirms at the beginning of the rite is the essential matter; while the subsequent anointing of each person to be confirmed belongs to the matter accidentally. Others maintain that this general imposition of hands and the anointing form the essential matter of the sacrament. The common opinion is that the anointing with chrism, together with the simultaneous imposition of the hand of the bishop on the forehead of the confirmed person while he makes

on it the sign of the cross with the chrism, is the adequate and essential matter of the sacrament.

Chrism, which is thus the remote matter of Confirmation, is made of olive oil and balsam. It is a disputed point whether the mixture of balsam is only of precept or whether it is necessary for the validity of the sacrament. However, balsam of any country will suffice. The chrism thus made must be blessed by a bishop, and this according to the common opinion is necessary for the validity of the sacrament.

Three kinds of holy oils are blessed by the bishop on Maundy Thursday: the oil of the sick, with which Extreme Unction is given; the oil of catechumens, with which those about to be baptized are anointed in administering Baptism; and chrism. It is probable that any one of these holy oils will serve for the others, so that Confirmation given with oil of the sick would be probably valid. Still it is not lawful to follow this opinion except in case of necessity.

A fresh supply of holy oils should be procured every year after they have been blessed by the bishop on Maundy Thursday, and the old ones burned. However, if the new oils can not be obtained at the proper time, especially in the missions where vicars-apostolic without episcopal consecration often have faculties to give Confirmation, the old oils may be used as long as the difficulty of obtaining new ones lasts.

3. The form of Confirmation is, "I sign thee with the sign of the cross, and I confirm thee with the chrism of salvation, in the name of the Father, and of the Son, and of the Holy Ghost." There is some doubt as to whether the invocation of the Blessed Trinity is an essential part

of the form, chiefly because it does not appear along with the other part in the form used in the Eastern Church. The question belongs to dogmatic theology, but briefly we may say that if it is an essential part of the form, the invocation is elsewhere in the Oriental rite.

## CHAPTER II

### THE MINISTER OF CONFIRMATION

The ordinary minister of Confirmation is a bishop, but the Pope may, and in the missions frequently does, delegate faculties to a priest to administer the sacrament with chrism blessed by a bishop. In other words, a bishop is the ordinary official in the hierarchy who has the power to admit Christians into the army of Our Lord by confirming them, but the General of the army in special cases empowers a simple priest to do this. It is a disputed point whether the Pope could empower a simple priest to bless the chrism.

A bishop may not give Confirmation outside his diocese without the leave of the bishop of the place; but within his diocese he may by custom confirm all who come to him, whether they are his subjects or not. A bishop is bound to give his subjects who have not been confirmed the opportunity of receiving the sacrament, and according to divines he would sin grievously if without good reason he neglected to do so for eight or ten years.[1]

Note. — The Third Plenary Council of Baltimore (n. 14) has the following enactment: "*Unusquisque igitur Episcopus saltem unoquoque triennio totam diœcesim perlustrare teneatur, non solum ut gregem suum cognoscat eaque omnia quæ ad spirituale eorum bonum necessaria sunt suis ipse oculis perspiciat, sed etiam ut fideles tot amittendæ fidei in hac*

[1] According to the new Code the bishop should see that at least every five years an opportunity is offered the faithful for receiving Confirmation. C.J.C., can. 785, sec. 3.

*regione periculis expositos Sacramento Confirmationis munire possit. Quod si per se ipse facere nequeat, id per alios idoneos viros præstet, adhibito etiam pro Sacramento Confirmationis alicujus inter viciniores Episcopos ministerio.*" — END OF NOTE.

He must also be prepared to administer Confirmation when a reasonable request is made for it by any of the faithful subject to his charge.

## CHAPTER III

### THE SUBJECT OF CONFIRMATION

1. ANY one is capable of being confirmed who has not yet received this sacrament and who has been baptized. For the validity of the sacrament the use of reason is not necessary, but adults who have the use of reason must have at least an habitual intention of receiving the sacrament. No one may lawfully receive this sacrament who is not in the state of grace. Moreover, according to modern discipline, Confirmation is only given to those who have been well instructed in Christian doctrine and know well what is required of a good Catholic. Before Confirmation is administered, the opportunity is usually taken to give special instructions in Catholic faith and practice to those who are about to receive the sacrament.

NOTE. — Regarding the instructions to be given to children in the United States the Third Plenary Council of Baltimore (n. 218) decreed as follows: "*Jubemus ergo ut parvulorum curam assiduam habeant animarum rectores, præsertim quo tempore parantur ad Sacram Synaxim prima vice recipiendam, et quidem ut ipsimet rectores vel eorum vicarii prædictos parvulos saltem per sex hebdomadas et ter in unaquaque (saltem in loco ubi resident vel ad quem facilius accedere possunt), Catechismum doceant. Nemo ad Confirmationis susceptionem admittatur, quin diligenter instruatur de iis, quæ ad naturam effectumque hujus Sacramenti spectant.*" — END OF NOTE.

One sponsor of the same sex as the person to be confirmed, who has himself received this sacrament, is required in Confirmation. He should not be the same as the sponsor of the party in Baptism; he must lay his right hand on the right shoulder of the person who is being confirmed, with whom and with whose parents he contracts spiritual relationship.[1]

NOTE. — According to the instruction of the S.C. of Propaganda given to the bishops of the United States on the occasion of the Second Plenary Council of Baltimore, the following decree (n. 253) was inserted: "*Quamquam de necessitate hujus Sacramenti non sit, ut in eo recipiendo Patrinus vel Matrina adhibeatur, cum tamen id laudabilis Ecclesiæ consuetudo suadeat, sacrique Canones præscribant, Episcopi nullum non movebunt lapidem, ut disciplina hujusmodi, jam in nonnullis harum Provinciarum Diocesibus invecta, ubique introducatur. Confirmati vero habebunt Patrinos singuli singulos, nec tamen fœminis mares nec maribus fœminæ Patrini officium præstabunt. Quod si hoc fieri omnino nequeat, saltem duo pro pueris Patrini, et duæ pro puellis Matrinæ adhibeantur.*" — END OF NOTE.

2. The First Synod of Westminster [2] prescribes that priests who have the cure of souls should do all in their power to have children confirmed, especially if they be of the humbler sort, so that they may be able to resist the temptations to which their Faith will afterward be

[1] No spiritual relationship is now contracted with the parents of the confirmed, nor is the spiritual relationship which still arises from Confirmation any longer a diriment impediment of marriage. C.J.C., can. 797; can. 1079.

[2] d. 17.

exposed. Many divines hold that it would be a grave sin to neglect to receive this sacrament. The opinion, however, of St. Thomas, that it is not strictly necessary, is still probable. Although, of course, it should not be neglected,[1] and sin would certainly be committed if this were done through contempt, yet there is no clear law, divine or ecclesiastical, which obliges all to receive confirmation under penalty of sin. Against this view the Constitution of Benedict XIV, *Etsi Pastoralis*, and the Instruction S. C. de P. F., May 4, 1774, are sometimes quoted. The former document, however, was not issued for the universal Church, but only for certain Greco-Italians of southern Italy, nor does an instruction of Propaganda constitute a law in the strict sense, especially for the universal Church.

Note. — A question arises, whether the opinion considered by the author as probable, *viz.*, that there is no strict precept of receiving the sacrament of Confirmation, may be held for the United States. There is a special difficulty here on account of a decree of the Second Plenary Council of Baltimore (n. 250), where the necessity of receiving this sacrament appears to be distinctly set forth. "*Licet vero hoc sacramentum non sit necessarium de necessitate medii ad salutem, nihilominus est necessarium de necessitate præcepti iis omnibus, qui jubentis Dei et Ecclesiæ præcepta intelligere et adimplere possunt.*" Some think that these words may be taken as indicating an obligation *sub veniali* only, or, if they indicate a grave obligation, one that is only *per accidens* grave. This interpretation does not seem easily admissible. When the Fathers of the council refer to Confirmation as necessary, *necessitate præcepti*, they appear to convey that it is obligatory under

[1] No one may neglect to receive Confirmation when he has the opportunity. C.J.C., can. 787.

penalty of mortal sin, and indeed *per se* thus obligatory. Whenever theologians use the distinction, *necessitas medii* and *necessitas præcepti*, they always mean by the latter something binding *sub gravi;* and binding *per se* in this manner, unless they employ the term, *per accidens*, or some equivalent expression. It is to be presumed that the bishops attached the same signification to the term. If we hold that in the decree there is question of a grave obligation *per se* to receive Confirmation, a further point may be raised; namely, whether the bishops in formulating the decree intended to exercise their legislative authority, so as to make it obligatory *sub gravi* for the faithful in the United States to receive this sacrament, or were expressing their opinion regarding the divine and ecclesiastical precept of receiving Confirmation without imposing any new obligation. It was competent for the bishops assembled in plenary council to legislate upon this matter, so that after the necessary approval of its acts would have been given by the Holy See the faithful in this country would be bound *sub gravi* to receive Confirmation. However, it is by no means clear that the bishops proposed to make any new legislation on this subject; more probably they were content to declare what they considered as the true opinion to be held concerning the necessity of Confirmation throughout the Church. The words of the decree, "*jubentis Dei et Ecclesiæ præcepta*," lend some weight to this view, as if the bishops were referring to a law already in existence, divine and ecclesiastical, requiring the faithful to receive Confirmation. That there was and is such a law has been held by many eminent theologians along with St. Alphonsus; and the opinion has received much support from the Constitution of Benedict

XIV, "*Etsi pastoralis*," as also from an Instruction of S. C. de P. F., April 23, 1774, wherein the following words are given: "*Etsi enim hoc sacramentum non sit de necessitate medii ad salutem, tamen sine gravis peccati reatu respui non potest, ac negligi, cum illud suscipiendi opportuna adest occasio.*" On the other hand, there have not been wanting many writers of note, ancient and modern, holding that there is no divine law, natural or positive, which can be adduced to prove the grave obligation of receiving Confirmation. St. Thomas (3. q. 72, a. 1, ad 3) says: "*Omnia sacramenta sunt aliqualiter necessaria ad salutem; sed quædam sunt, sine quibus non est salus; quædam vero sunt quæ cooperantur ad perfectionem salutis; et hoc modo confirmatio est de necessitate salutis, quamvis sine ea possit esse salus, dum tamen non prætermittitur ex contemptu sacramenti.*"

In answer to the argument taken from the words of the S. C. de P. F., it may be said that it was not the intention of that Congregation to settle the controversy among theologians regarding the necessity of Confirmation. It is interesting to note that the same year (1866) in which the decrees of the Second Plenary Council of Baltimore were presented to the Holy See for approval, the Holy Office published an Instruction containing a positive statement in favor of the opinion of St. Thomas that there is no grave obligation *per se* of receiving Confirmation. "*Ut docet Sanctus Thomas* (3. q. 72, a. 8, ad 4), *omnino periculosum esset si ab hac vita sine confirmatione migrare contingeret, non quia damnaretur, nisi forte propter contemptum, sed quia detrimentum perfectionis pateretur.*" (S. O. June 20, 1866.) From these words it may be inferred that there is no divine law or any general ecclesias-

tical law *per se* obliging the faithful under pain of mortal sin to receive this sacrament. It may also be held with probability that in the United States there is no special ecclesiastical legislation requiring its reception. — END OF NOTE.

# BOOK IV

## THE HOLY EUCHARIST

### Part I

### THE SACRAMENT OF THE EUCHARIST

### CHAPTER I

#### THE NATURE AND EFFECTS OF THE EUCHARIST

1. The Council of Trent teaches "that in the august sacrament of the Holy Eucharist after the consecration of the bread and wine Our Lord Jesus Christ, true God and man, is truly, really, and substantially contained under the species of those sensible things. For neither are these things mutually repugnant, — that Our Saviour Himself always sitteth at the right hand of the Father in heaven, according to the natural mode of existing, and that nevertheless He be in many other places sacramentally present to us, in His own substance, by a manner of existing which, though we can scarcely express it in words, yet can we by the understanding, illuminated by faith, conceive, and we ought most firmly to believe, to be possible unto God; for thus all our forefathers, as many as were in the true Church of Christ, who have treated of this most holy sacrament, have most openly professed, that Our Redeemer instituted this so admirable a sacrament at the Last Supper, when after the blessing of the bread and wine, He testified

in express and clear words that He gave them His own very body and His own blood. And this faith has ever been in the Church of God, that immediately after the consecration the veritable body of Our Lord and His veritable blood together with His soul and divinity are under the species of bread and wine."[1] It does not belong to the province of moral theology to prove or to defend this dogma of our Faith. We accept the teaching of the Church that the Holy Eucharist is a sacrament in which under the species of bread and wine we receive Jesus Christ, the spiritual food of our souls. It is not merely a sacrament while it is received by the communicant, or while it is consecrated by the priest in Mass. It is a permanent sacrament, under which Our Lord remains present as long as the sacred species remain unchanged. It gives sacramental grace to the soul while it is being swallowed as food, and the divine presence remains in the communicant until the species of bread and wine are corrupted.

Although in the consecration there is a twofold matter and form, yet these constitute only one sacrament, for the species of bread and wine together signify a complete spiritual repast, just as food and drink go to make one meal for the body.

2. The effects which the Holy Eucharist produces in the soul are set forth by the Council of Trent: "Our Saviour wished that this sacrament should be received as the spiritual food of souls, whereby may be fed and strengthened those who live with His life who said, 'He that eateth Me, the same also shall live by me'; and as an antidote, whereby we may be freed from daily faults, and be preserved from mortal sins. He would, furthermore,

[1] Sess. xiii, c. 1, 3.

have it be a pledge of our glory to come, and everlasting happiness, and thus be a symbol of that one body whereof He is the head, and to which he would fain have us as members be united by the closest bond of faith, hope, and charity, that we might all speak the same things, and there might be no schisms amongst us." [1] Besides being an antidote by which we are preserved from mortal sin, it is a very probable opinion that if the Eucharist is received by one in a state of mortal sin, of which he is not conscious and to which he is not attached, that sin will be forgiven. For the sacraments give grace to all who put no obstacle in their way, and such a communicant can not be said to put an obstacle to the grace of the sacrament. But the entrance of grace expels all mortal sin from the soul. This is the teaching of St. Thomas [2] and many other theologians.

[1] Sess. xiii, c. 2.

[2] Summa, 3, q. 79, a. 3.

## CHAPTER II

### THE MATTER AND FORM OF THE EUCHARIST

1. The remote matter of the Eucharist is twofold, wheaten bread and wine of the grape. Barley bread, or bread made from oats or rye, or any other kind of grain or vegetables or fruits, is invalid matter. The wheaten bread must be baked with water, not boiled, or mere dough. If baked with oil or milk or butter, it will be doubtful matter. The wine must be genuine juice of the grape, not made artificially; wine made from any other kind of fruit will be invalid matter. If the wine has become vinegar, it is changed substantially, and will not serve for Mass; if it has only begun to get sour, it will be consecrated validly, but the priest who uses it sins grievously. There is some controversy as to whether frozen wine could be consecrated. The rubrics prescribe that if the precious blood is frozen after the consecration it should be liquefied again by putting warm cloths about the chalice and then consumed. It is clear, then, that freezing does not change the species substantially so as to render Our Lord no longer present under them; it follows from this that freezing does not prevent the wine being consecrated.

Unfermented bread is used for the Eucharist in the Western Church, and fermented in the Oriental rites. Members of the two Churches are bound under grave precept to follow their respective rites, even if a Western priest were for a time in the East; but if there be only one

church in a place and of a different rite from one's own, the priest may say Mass according to either rite, and a lay person may in the same way receive holy communion.

Because water came forth from the opened side of Our Redeemer with His blood, the Church has commanded that in saying Mass a little water, not more than a fifth or at most a third part of the wine, should be mixed with the wine in the chalice. If the wine of a country is of a poor quality and difficult to keep, a little alcohol may be added to it to preserve it, but not so as to make more than 12 or 18 per cent. of the whole. No other matter may be added either to the flour or to the wine which are used for the Blessed Eucharist, and the greatest care should be taken both by bishops and priests to insure the use of only genuine matter in the confection of this sacrament.

2. The form of consecration for the bread is, "For this is My body," and for the chalice, "For this is the chalice of My blood of the New Testament, the mystery of faith, which shall be shed for you and for many unto the remission of sins." Any change in these forms which would make the sense different would also make them invalid.

There is a controversy among theologians as to whether the whole of the above form for the consecration of the chalice is essential, or whether it would be sufficient for the validity of the consecration to say only, "This is the chalice of My blood." It is very probable that these words alone constitute the essential form for the consecration of the chalice, though of course the fuller form must always be used. For these words alone signify the real presence of Our Lord; the rest are merely a further declaration or explanation of them. Besides, "This is My body," constitutes the valid form for the consecration of the bread,

and so by analogy, "This is the chalice of My blood," should constitute the valid form for the consecration of the wine.

3. For the valid consecration of the Eucharist the priest must not only use the proper matter according to the institution of Christ, but that matter must be physically present, not far distant from him, when he pronounces the form of consecration. This essential condition is required by the sense of the form, "This is My body," which indicates that the matter to be consecrated is near the priest, so that it can be indicated by the demonstrative pronoun. Hence a priest in one room could not consecrate bread and wine in another, or behind his back, or, as it would seem, locked up in the tabernacle. Moreover, the matter must be determined by the intention of the priest; he would not consecrate a host which had been left on the altar for him to consecrate, but about which he knew nothing, and which he had no intention to consecrate. A difficulty sometimes arises when a priest has been asked to consecrate the ciborium which is placed on the altar by the sacristan, but which the priest afterward forgets to take and place on the corporal for consecration. What is intended for consecration should be placed on the corporal and on the altar-stone of sacrifice. Inasmuch as this was not done, and it would be wrong to intend to consecrate a ciborium which had not been placed on the corporal, it would seem at first sight that such a ciborium is not consecrated. It is, however, better to make a distinction. If the priest had intended to consecrate the ciborium and during Mass had noticed its presence, though he did not advert to its being off the corporal, it would certainly be consecrated. If, on the contrary, after being notified in

the sacristy about consecrating the ciborium, he forgot all about it, and never adverted to its presence on the altar, the consecration will be doubtful; and hosts thus doubtfully consecrated should on no account be given as communion to the faithful, but should be consecrated conditionally in another Mass, or if they are few in number they might be consumed by the priest before taking the ablutions.

Furthermore, for the lawful consecration of the matter, the hosts must be whole, clean, and of the usual size and shape; the chalice and ciborium must be uncovered, and the consecration must be in Mass as it is prescribed to be said and under both kinds. If the ciborium or chalice are by mistake left covered, the consecration will be valid, for all the conditions required for validity are fulfilled. Hosts to be consecrated should be on the corporal at the offertory when the victim is set aside for the sacrifice, but if this has not been done, they may be received up to the canon, or for grave reason even up to the consecration, but the oblation should be mentally supplied.

## CHAPTER III

### THE MINISTER OF THE EUCHARIST

1. Only a priest can say Mass and consecrate the Eucharist, and a priest is also the ordinary minister who distributes holy communion to others. If, however, the priest is occupied and is unable to give holy communion himself, he may delegate faculties to a deacon who is the extraordinary minister of the Eucharist. In case of necessity, especially when there is danger of dying without receiving the Viaticum, and there is no priest or deacon to give it, a simple cleric, or even a lay person, may administer holy communion to himself, or to another. It was not very unusual in the primitive Church for laymen to do this, but nowadays the occasion would seldom arise.

2. Ordinary or delegated jurisdiction is required for the lawful administration of the Eucharist, and by the common law of the Church the right belongs exclusively to the parish priest whenever holy communion is of strict precept, as it is at the time of death and at Easter. By custom a priest may administer holy communion in any church where he has been allowed to say Mass to any of the faithful who ask for it.

Regulars have the privilege of being able at all times to give holy communion to their own members and de-

pendents who live under their roof. They may also give it to externs in their own churches at all times except Easter. By the common law of the Church, Regulars who, except in case of necessity, presume to administer Extreme Unction or the Eucharist as Viaticum to clerics or lay people without the leave of the parish priest, incur the penalty of excommunication reserved to the Holy See by the constitution of Pius IX, *Apostolicæ Sedis*. In Great Britain, and generally in the United States, parishes in the strict sense have not yet been erected, and the faithful in these countries may receive their Easter communion in any public church; and although the missionary rights of priests should be respected, still the above censure does not seem to affect transgressors of them.

3. All who have the cure of souls are bound to administer the Eucharist to their flock, not only when these are under an obligation to receive it, but whenever they reasonably ask for it. This obligation is grave, but it does not bind with proximate danger of death from catching disease or from some other cause, nor is a single refusal of the sacrament necessarily a grave sin, for the loss of it may easily be made up on another occasion. Priests who have not the cure of souls may sometimes be bound to administer holy communion, not out of justice but out of charity.

4. For the lawful administration of holy communion the minister must be free from all censures which deprive him of the right to administer it; he must be in the state of grace, and he must follow the rubrics laid down by the Church in the Missal and Ritual.

The proper time for those who wish to communicate to receive holy communion is in Mass after the communion of the priest. However, if there be a reasonable cause,

which need not be a grave one, communion may be given out of Mass, either before or after, and even in black vestments, either before or during or after a Requiem Mass, but in this case the blessing otherwise given to the communicants before or after Mass is omitted.

Pius X, by a decree dated May 8, 1907, declared that the faculty of giving holy communion to all the faithful present at Mass was to be understood as included in the faculty of saying Mass in a private oratory, saving the rights of parish priests. It may be given to the sick in danger of death at all times, but to the faithful generally it is forbidden to give communion on Good Friday, and on Holy Saturday before Mass. It should not be given at the Mass which is said at midnight on Christmas Day unless leave for it has been obtained, nor in the evening, nor at night.

The Blessed Sacrament should not be taken from the church except when it is carried to the sick, and then with all the marks of honor prescribed by the rubrics of the Ritual. However, in English-speaking countries the Holy Eucharist can not be taken to the sick publicly, so it is carried in a small pyx enclosed in a bag specially made for the purpose, and suspended by a cord or chain from the priest's neck. The priest should have on a stole underneath his coat.

Note. — Our author does not state any reason for holding that the priest should wear a stole underneath his coat when privately carrying the Holy Eucharist to the sick. It is certain that many priests, conscientious and well informed, do not observe this practice; and the existence of the obligation for the United States may be called in question. There is no rubric which can be ad-

duced to prove the obligation of wearing the stole during the journey to the house of the sick person; nor is there any general decree of the S. Cong. of Rites requiring it. In the Plenary Councils of Baltimore there is no word to suggest the existence of this obligation. The Second Plenary Council has a decree relating to the manner of bringing the Holy Eucharist to the sick (n. 263), as follows: "*Dolendum sane est rerum adjuncta, quæ apud nos obtinent, impedire quominus ea cum pompa, quam vult Ecclesia, ad infirmos deferatur Sanctissimum Sacramentum. Studeant itaque sacerdotes, ut interna animi devotione hujus pompæ defectum suppleant, simulque haud negligant, quantum in ipsis est, reverentiæ externæ, quæ Christo revera præsenti debetur, prospicere. Dum Sanctissimum deferant, vana et inutilia evitent colloquia: piæ potius contemplationi vel precibus dent operam. 'Delatio Sanctissimi Sacramenti ad urgentes tantum causas, atque ad actuale ministerii sacerdotalis exercitium coarctetur.' Quænam vero sit urgens causa, ex loci, temporis, aliisque adjunctis erit dijudicandum. Injungimus 'presbyteris strictam obligationem semper in hisce casibus Sanctam Hostiam super pectus deferendi. Numquam nisi in extrema necessitate vel ipsam Hostiam vel vas sacrum in quo servetur, stola saltem non induti attrectent. Cum in ecclesia Sanctissimum e tabernaculo extrahunt, semper superpelliceo et stola sint induti. Infirmis Sacram Eucharistiam ministrantes, præscripta Ritualis Romani, in quantum rerum circumstantiæ sinunt, diligentissime servent.*" We see from this decree that the bishops prohibit priests from handling the Blessed Sacrament or even the sacred vessel containing it, unless they wear a stole; and they prescribe that the priest, when taking the Blessed Sacrament from the tabernacle, should wear a stole and surplice.

Now, if the Fathers of the council thought that there was an obligation of wearing a stole not only when touching the Blessed Sacrament immediately on taking it out of the tabernacle, but also when carrying it to the sick-room, it should be expected that they would refer to the latter obligation as well as the former.

O'Kane, in his well-known work, "Notes on the Rubrics of the Roman Ritual," treats with minute detail of the manner of administering holy communion to the sick; yet he says nothing to show that a priest should wear a stole under his coat on his way to the house of the sick person. On the contrary, it is clear from this author that it need not be worn then. In n. 797 (second edition) it is said: "With us, the priest goes to the house of the sick person in his ordinary dress; but he should bring with him, or contrive to send before him, the vestments which the rubric requires him to wear." In the sentence immediately preceding he mentions what these vestments are, *viz.*, the surplice and stole. Hence, this writer supposes the priest to go to the sick person's house not wearing a stole, but bringing it with him or sending it before him. Again, in n. 838, discussing the case in which the priest has brought more than one consecrated particle in his pyx, whether he should, after administering holy communion to the sick person, give benediction of the Blessed Sacrament with the pyx containing another consecrated particle, O'Kane says: "In these circumstances, we think the priest should put the pyx into its case or covering, and give the benediction with it thus covered. He should then fasten it around his neck, as before directed; and after this, but not sooner, he may lay aside the stole and surplice." If the priest may lay

aside the stole after fastening the pyx, he need not wear the stole when carrying the Blessed Sacrament to another sick person or back to the church. The opinion of this author is of much weight, because his work on the rubrics received the special approbation of the S.C. of Rites and was declared to be "*vere commendabile et accuratissimum.*" Since the date of that approbation (February 14, 1868), there has been no decree of the S.C. of Rites condemning the opinion; nor has there been any prohibition issued against following it, at least for the United States. Attention may be also drawn to the excellent work written by Dr. Heuser, of Overbrook Seminary, "The Parish Priest on Duty." In this manual, which was prepared for the pastors, assistants, and theological students in the United States, the author has a section on the private administration of the Viaticum, and sets down the requisites therefor. At the conclusion there is a note to the effect that if the pyx be already in the tabernacle and contain the Blessed Sacrament, the priest "may take the pyx case from the tabernacle without being vested with surplice and stole and without lights." If the priest do not need a stole to take out the pyx and duly fasten it upon his breast, he does not need it afterward when carrying the pyx to the house of the sick person.

Perhaps so much might not be said upon this question, were it not that an esteemed writer on the sacred liturgy, Wapelhorst, holds the stricter opinion. In n. 284 of his work (sixth edition) he says: "*Deinde assumit, quæ requiruntur pro Viatico administrando; nempe Rituale, superpelliceum revolutum, stolam albam, quam imponit subtus vestem exteriorem, si fieri possit.*" In a note the author in order to confirm this opinion, quotes a constitution of

Benedict XIV, wherein the following words are found: "*Ubi Turcarum vis prævalet et iniquitas, Sacerdos stolam semper habeat propriis coopertam vestibus: in sacculo seu bursa pyxidem recondat, quam per funiculos collo appensam in sinu reponat.*" It should be observed that this constitution, "*Inter Omnigenas,*" published February 2, 1744, was not for the entire Church, but only for Servia and the adjoining countries then suffering religious persecution from the Turks. It may be added that if this constitution be obligatory for the whole Church, it would follow that a priest can never carry holy communion privately, unless he be accompanied by one of the faithful in the absence of a cleric. The reason is that, immediately after the words of Benedict XIV, quoted by Wapelhorst, we find the following in the constitution: "*Et nunquam solus procedat, sed uno saltem fideli, in defectu clerici, associetur.*" No one, I suppose, holds that this latter regulation is obligatory in the United States. It may perhaps be urged that the extract from that constitution, including the portion quoted by Wapelhorst and the other portion regarding the necessity of a companion, is found in the appendix to the Roman Ritual, so that its insertion therein indicates its obligatory force everywhere. To answer this difficulty much could be said; let it suffice to notice that the appendix referred to is, as appears from its title-page, nothing more than a collection of blessings and instructions approved or permitted by the Holy See. It may be readily granted that a priest is permitted out of devotion to wear a stole under his coat when privately carrying the Blessed Sacrament to the sick; but that there is any precept or direction applicable to the United States does not appear. — End of Note.

5. If a consecrated host falls on the ground or on the communion cloth, the place should be marked and afterward washed, and the water poured into the piscina. If the precious blood is spilled, the priest should suck it up as far as possible, and afterward the place should be well washed, scraped, and the water and scrapings poured into the piscina. If a consecrated host fall on the beard or clothes of a communicant, the place on which it fell need not be washed. If it falls on the breast or dress of a woman, she should take it reverently in her fingers and give it to the priest, who will then administer it to her as communion.

If, while he is still vested, a priest discovers what seem to be particles consecrated in his Mass, the rubrics direct that he should consume them, even though no longer fasting; if he has put off the sacred vestments, or if the particles do not belong to his Mass, they should be reserved for another priest to consume after his own communion, or placed in the tabernacle.

If the Blessed Sacrament is vomited by a sick man, the sacred species should be carefully separated and placed in a vessel in the tabernacle until they corrupt, when they should be thrown into the piscina. Corruption will more quickly take place, and any disagreeable odor will be avoided, if a little water be put into the vessel.

## CHAPTER IV

### THE RESERVATION OF THE EUCHARIST

1. The Ritual prescribes that the parish priest, or one who has the cure of souls, should take care that some consecrated particles, in sufficient number for the use of the sick and for the communion of the rest of the faithful, should be always reserved in a clean pyx of solid and decent material, well closed with its own lid, covered with a white veil, and as far as possible in an ornamented tabernacle kept locked with a key. This key should be in the keeping of the priest, not in that of the sacristan or other person. As a rule the pyx or ciborium is of silver, and gilded inside. There seems to be no strict law prescribing that it should be consecrated or even blessed, though there is a form for blessing it in the Ritual.

The Blessed Sacrament, then, must be thus reserved for the use of the faithful in all cathedrals, parish churches, and chapels of ease attached to parochial churches. Religious Orders of men and women who take solemn vows have the privilege of reserving the Holy Eucharist in their churches. It can only be reserved in other churches or oratories by special indult from the bishop, or from the Holy See in the case of strictly private oratories.

Note. — Regarding the reservation of the Blessed Sacrament, the Second Plenary Council of Baltimore (n. 265)

has the following: "*Conservari debet in ecclesia Cathedrali, et in quavis ecclesia parochali ut ad infirmos, data occasione, deferri possit. In aliis vero pluribus vel ecclesiis vel sacellis conservari potest vel ex lege, vel ex Pontificis indulto. Qua in re Ordinarios hortamur ut curent, uti nonnisi debita præhabita licentia hoc maximo privilegio quævis ædes sacra utatur.*" Bishops are restricted in their powers to grant leave for reserving the Blessed Sacrament, as appears from a decree of the S. C. of Rites (March 8, 1879). "*Potestne Episcopus jure proprio concedere facultatem asservandi SSmum Sacramentum:* 1. *In Ecclesiis seu Capellis publicis quæ tamen titulo parochiali non gaudent, etsi utilitatibus Parœciæ inserviant;* 2. *In Capellis piarum Communitatum publicis, id est quarum porta pateat in via publica vel in area cum via publica communicante et quæ habitantibus omnibus aperiuntur;* 3. *In Capellis seu Oratoriis interioribus piarum Communitatum, quando non habent Capellam seu Oratorium publicum in sensu exposito, ut evenit,* e.g., *in Seminariis?*" The response to these questions was: "*Implorandum est indultum a Sancta Sede quoad omnia postulata.*" See Decr. Auth., n. 3484. From an examination of the acts of various provincial councils in the United States it is clear that many provinces received an indult of this kind more or less extensively. Thus, on July 25, 1858, on the occasion of holding the Ninth Provincial Council of Baltimore, the faculty was granted to this ecclesiastical province in virtue of which the bishops could grant permission for the Blessed Sacrament to be kept in the chapels of Religious communities of women. See Coll. Lacensis, vol. 3, p. 180. In the same year (November 10), on the occasion of holding the Second Provincial Council of Cincinnati, the bishops of that province received

the faculty of permitting the Blessed Sacrament to be kept in Religious communities without enclosure: "*Potestatem tribuit Episcopis permittendi communitatibus Religiosis absque clausura viventibus conservationem SSmæ Eucharistiæ.*" See Coll. Lacensis, vol. 3, p. 212. On April 17, 1859, the privilege was given to the archbishop of St. Louis and his suffragans that the Blessed Sacrament might be kept in Religious houses although they were not canonically erected. In the archdiocese of St. Louis it is permitted that in the oratories of Sisters having a Religious house the Blessed Sacrament may be kept, provided that four persons live in the house. See Diocesan Statutes of St. Louis, n. 68. As regards other dioceses of this country it may be safely said that there is hardly one that does not possess an indult with less or more limitation for reserving the Blessed Sacrament. — END OF NOTE.

2. The Ritual further prescribes that the tabernacle should be decently covered with a veil, that nothing else besides the Blessed Sacrament should be put in it, and that it should be placed on the high altar, or on another if this would conduce to greater reverence toward the Holy Eucharist, so that it would be no obstacle to sacred functions or ecclesiastical offices. Several lamps or at least one should always be kept burning before it night and day. The lamps should be fed with olive oil, but if the church is very poor the bishop may allow vegetable or mineral oil to be used. Gas or electric lamps should not be tolerated. One lamp must be kept burning under pain of grievous sin.

The veil of the tabernacle should be white or in keeping with the color of the day, but never black.

3. The particles taken for consecration should be fresh, not more than fifteen days or at most a month old, and they should be renewed every eight or at most fifteen days, though in this matter regard should be had to the dampness or dryness of the place and season.

NOTE. — It may be well to consider this question more in detail so far as the United States is concerned. The Roman Ritual requires the consecrated particles to be renewed frequently, "*Sanctissimæ Eucharistiæ particulas frequenter renovabit*" (Tit. 4, cap. 1, n. 7). The *Cæremoniale Episcoporum* prescribes this renovation to be made once a week (Lib. 1, cap. 6, n. 2). Benedict XIV, in his constitution, "*Etsi Pastoralis*" (May 16, 1752), ordered for the Greeks in Italy that the sacred species should be renewed every eight, or at least every fifteen days. Gasparri in his treatise, *De SS. Eucharistia* (vol. 2, n. 1013), concludes that in the Western Church the species should be renewed "*Singulis octo diebus juxta norma Cæremonialis: Græcis autem aliisque Orientalibus permissum esse hanc renovationem protrahere ad singulos quindecim dies.*" He then adds that many excuse from all sin, even in the Western Church, if the renewal takes place within fifteen days, provided that the condition of place and time exclude all danger of initial corruption.

It was evidently the intention of the Fathers of the Second Plenary Council of Baltimore to urge the observance of the *Cæremoniale Episcoporum* regarding the weekly renewal of the sacred species, for they say (n. 268): "*Rituale Romanum jubet particulas Sanctissimæ Eucharistiæ frequenter renovari: et Cæremoniale Episcoporum id semel saltem in hebdomada faciendum præcipit. Hanc regulam,*

*quam S. Rituum Congregatio nedum sæpius confirmavit, verum stricte et rigorose obligare declaravit, sacerdotibus omnibus fideliter servandum serio inculcamus.*" The decrees of the Second Plenary Council of Baltimore were declared by the Fathers of the Third Plenary Council in 1884 to be still in force, except those which were changed or abrogated in the latter council. (Cf. p. 3, Decr. Conc. Balt. Tertii.) But regarding the law of renewing the species the Third Plenary Council made no change or abrogation; nor since that time in this country has there been any sign of alteration in the Church's discipline on the question. Hence it does not appear that in the United States we are at liberty to follow the opinion of those theologians who hold that the renewal of the sacred species may be deferred for two weeks. (Cf. Lehmkuhl, vol. 2, n. 132.) Still less is it permissible in this country to follow the opinion of those who allow a month to elapse before it becomes necessary to renew the sacred species. (Noldin, De Sacramentis, n. 129.) Whether some provincial councils elsewhere were content to require that the renewal should not be deferred beyond two weeks or a month, or whether the Holy See directly granted for a particular locality permission to defer the renewal for two weeks, neither of these ordinances would seem to be applicable to the United States, where the regulation of the *Cæremoniale Episcoporum* is required to be observed. The Second Plenary Council of Baltimore (n. 268) says that the S. Cong. of Rites has not only confirmed the rule of the *Cæremoniale Episcoporum*, and for this purpose it refers to three decrees of that Congregation, but also declares that another decree of this Congregation pronounces the rule to be strictly obligatory, "*stricte et rigorose obligare.*" Nothing then

remains, it would seem, but to admit the obligation so clearly set forth by this council. Even since its celebration the S. Cong. of Rites has repeated the decision. A question was proposed whether the custom existing of renewing the species once or twice in the month could be continued: "*In ecclesiis hujus diœceseos servari ne potest consuetudo renovandi SSmam Eucharistiam semel vel bis in mense; licet qualibet hebdomada juxta Cœremoniale Episcoporum eadem SSma Eucharistia foret renovanda?*" The answer was (September 12, 1884), "*Servetur dispositio Cœremonialis Episcoporum* (lib. 1, cap. 6, n. 2)."

Assuming, therefore, that there is in the United States a precept which requires the weekly renewal of the sacred species, the question arises, what sin is committed if a priest defer this duty. It is certain that while this precept of renewing the species binds *sub gravi*, it admits of *parvitas materiæ*, so that a short delay beyond a week would not constitute a mortal sin, unless some serious danger of the corruption of the species would arise. Prescinding from this danger, it may be held that the delay of a week would not be a mortal sin, and probably even the delay of a month. Gasparri (n. 1013) says that the particles to be consecrated should be fresh, *i.e.*, recently made, and that the time for necessary renewal depends to some extent upon the degree of freshness, so that if the hosts at the time of consecration had been made twenty-five days the renewal could not be protracted for eight days. (See also Wernz, Jus Decretalium, vol. 3, n. 551 in nota 219.) It seems safe to hold that a reasonable cause of deferring the renewal for a day or even for a few days would excuse from venial sin. Thus during a novena the

host for Benediction might be kept for nine days; and a number of small hosts which would be distributed to the faithful within a few days might be kept before the purification of the ciborium. (See O'Kane, n. 620.) — End of Note.

## CHAPTER V

### THE SUBJECT OF THE EUCHARIST

### Article I

*The Necessity of the Eucharist*

1. The Holy Eucharist can be received only materially by one who is not baptized and who consequently is incapable of receiving the other sacraments; it is received spiritually by one who ardently desires to receive it with the proper dispositions; it is received sacramentally when it is really received by one who has been baptized. The sacramental reception of the Eucharist is not a necessary means of salvation, for it is a sacrament of the living and supposes the grace of God in the soul, and a soul in the state of grace has everything which is necessary for salvation. Divines dispute whether the Eucharist is a necessary means for preserving the life of grace in the soul. It is, indeed, the ordinary food of the Christian soul, as bread is the ordinary food of the body, but as there is other spiritual food which may be taken, and notably prayer, and this may supply for the want of the ordinary food, the better opinion holds that the Eucharist is not strictly necessary even for the preservation of the life of grace in the soul. However, it is certainly necessary by divine and ecclesiastical precept. The divine precept is manifest from the words of Our Lord: "Unless you eat the flesh of the Son of man and drink His blood you shall not have

life in you."[1] Not that these words imply that communion under both kinds is of divine law, for he who receives the sacrament under one species receives the body and blood of Christ with His soul and divinity. Moreover, as the Council of Trent explains,[2] He who made use of those words also said, "He that eateth this bread shall live forever."[3] The Church, therefore, for just and weighty reasons has forbidden communion under both kinds, using the power given to her by Christ with reference to the dispensation of the sacraments, though she has no authority to change their substance.[4]

This divine precept must be fulfilled at least at the time of death, when it is of the greatest importance, and also sometimes during life. How often it must be received to satisfy the divine precept is uncertain, but the Church has determined the divine law by ordering all the faithful who have come to years of discretion to receive holy communion at least once a year, at Easter.[5] Those, however, who desire to lead a good Catholic life are by no means content with yearly communion; they receive it once a month or still more frequently.

2. According to the general rule, children become subject to and bound to obey the positive laws of the Church when they reach the age of seven. The Ritual, however, says of the Eucharist that it should not be administered to those who, on account of their tender years, have not as yet sufficient knowledge and relish for this sacrament. According to the common practice, children make their first communion between the ages of nine and twelve, but if a child over seven is in danger of death, Viaticum should

[1] John vi. 54. [2] Sess. xxi, c. 1. [3] John vi. 55.
[4] Trent, sess. xxi, c. 2. [5] 4 Lat. c. 21.

be given to it, even though it has not yet made its first communion. (See Appendix E, page 510.)

NOTE. — Regarding the age for first communion, the Second Plenary Council of Baltimore (n. 261) gives the following regulation: "*Hæc vero regula generalis, quæ tamen suas admittat exceptiones, statui videtur tuto posse, neminem scilicet, ordinarie loquendo, ante decimum annum Angelorum Panis participem fieri debere, nec post annum decimum quartum cuivis cæteroquin digno eum esse negandum. Meminerint vero sacerdotes, tantam non desiderari ætatem, ut quis in articulo mortis Sanctissimo Viatico possit et debeat muniri. E contra male se gererent, nec leviter derelinquerent, si pueros perspicacis ingenii sine Viatico e vivis excedere sinerent, ea inepta moti ratione, quod numquam antea ad Eucharisticam mensam fuerint admissi.*" Whether according to this decree the tenth year should be merely begun or completed is not quite clear; similarly with regard to the fourteenth year. It might happen that a child could and should be admitted to first communion earlier than the tenth year, because the use of reason has been sufficiently reached, or the years of discretion required by the Fourth Council of Lateran and by the Council of Trent; or it might occur that a child of fourteen years of age has not received the necessary amount of instruction for receiving holy communion. The general rule given above does not apply to such persons, and indeed this is implied in the words, "*quæ suas admittit exceptiones.*" The bishops did not propose to legislate for those special cases, since there is a general law of the Church determining the divine law laid down by the councils of Lateran and Trent that all should receive holy communion as soon as they have arrived at the years of discretion, that is, have sufficient

knowledge of the sacrament of the Eucharist. Hence, if a pastor have in his parish a child under ten years of age, well instructed regarding this sacrament, there would be an obligation of admitting him to first communion. This admission would not interfere with the public first communion, which could be afterward made along with the other children of the parish. A bishop, while he could not prevent a child under ten years, if properly instructed, from being privately admitted to holy communion, may very well make a regulation for public first communion that a child could not make it before that age. This is manifest from a response of the S. C. of the Council given to the bishop of Annecy on July 21, 1888. This bishop had made for his diocese the following statutes: "1. *Nullus puer masculus aut fœmina admittetur ad primam communionem peragendam nisi,* (a) *expleverit duodecimum annum,* (b) *exacte secutus fuerit catechismum per duos ultimos annos . . .*; 2. *Ab exordio anni* 1885 *prima puerorum communio locum habere nequibit in qualibet parochia diocesis hujus ante diem vigesimum mensis Maii.*" A question was then proposed to the Holy See, "*An decreta episcopi Anneciensis sint confirmanda vel infirmanda in casu?*" The answer was: "*Attentis locorum ac temporis circumstantiis, affirmative ad primam partem juxta modum.*" The S.C.C., explaining this *modus,* added: "*Ne episcopus parochos prohibeat ab admittendis ad primam communionem iis pueris de quibus certo constat eos ad discretionis ætatem juxta Conciliorum Lateranensis Quarti et Tridentini decreta pervenisse.*" Gasparri (n. 1169, *De SS. Eucharistia*) mentions that the Sovereign Pontiff declared in an audience, July 23, 1888, that the words, "*Ad primam communionem,*" "*esse intelligenda ad exclusionem primæ communionis in forma*

*solemni.*" This author then adds: "*Ex his igitur apparet parvulos qui ante indicatam ætatem apti inveniuntur, posse et debere admitti ad primam communionem in forma privata, non autem ad primam communionem in forma publica et solemni in diocesi recepta: pro quo decreto episcopali standum est. Hanc fuisse mentem S. C. respondentis et Pontificis responsionem approbantis patet per se et Præfectus ejusdem S. C. expresse etiam declaravit.*" — END OF NOTE.

It is a disputed point whether one who is now in danger of death and who has within the last few days received holy communion is bound by divine precept to receive Viaticum. Although any good Catholic would certainly receive it again, yet the obligation to do so is not clear, because the previous communion in all probability satisfies the divine law. If one becomes dangerously ill on the day on which he has received holy communion out of devotion, it is similarly a disputed point whether he may, or is bound to, receive it again as Viaticum. Ordinarily, indeed, no one should receive holy communion twice on the same day, but in this case he may do so, though he is not bound to do so, on account of the variety of opinions.

3. Holy communion should not be given to those who have lost the use of reason, but if they have lucid intervals it may then be given if there be no danger of irreverence. To those who are in danger of death, and have lost the use of their senses, it may be given if they can swallow, and there is no danger of irreverence; and it should be given as Viaticum to criminals condemned to death if they are in the proper dispositions. Reverence forbids it to be

given to those who are suffering from constant coughing, and to those who can not retain any food on the stomach, unless they have been free from vomiting for six hours or so.

## Article II

### *The Dispositions Requisite for the Reception of the Eucharist*

#### Section I

#### *The Dispositions of the Soul*

1. Besides having sufficient knowledge of what the Eucharist is, he who receives it should be in the state of grace and free from mortal sin. The presence in the soul of venial sin unrepented of is indeed a defect and an obstacle to the fullest outpouring of God's grace, but it is not a new sin to receive holy communion with only venial sins on the soul. But it is a grievous sacrilege to receive the Eucharist while conscious of being in mortal sin, "For he that eateth and drinketh unworthily, eateth and drinketh judgment to himself, not discerning the body of the Lord." It is not sufficient for one who is conscious of mortal sin to recover the state of grace by making an act of perfect contrition before communion; he is bound to go to confession. This is taught us by the Council of Trent:[1] "Wherefore he who would communicate ought to recall to mind the precept of the Apostle, *Let a man prove himself.* Now ecclesiastical usage declares that necessary proof to be, that no one conscious to himself of mortal sin, how contrite soever he may seem to himself, ought to

[1] Sess. xiii, c. 7.

approach to the sacred Eucharist without previous sacramental confession. This, the holy synod hath decreed, is to be invariably observed by all Christians, even by those priests on whom it may be incumbent by their office to celebrate, provided the opportunity of a confessor do not fail them; but if in an urgent necessity a priest should celebrate without previous confession, let him confess as soon as possible." No one, then, who is conscious of mortal sin may go to holy communion without sacramental confession, unless he is under some necessity of receiving the Eucharist, and there is no opportunity of going to confession. There will be such necessity as is here contemplated if a priest has to say Mass for his people on a day of obligation, or to consecrate the Viaticum for a dying person, or if communion must be received to avoid scandal, or to satisfy the Easter precept. There is no opportunity of going to confession if there is no priest present who can give absolution, and it would be a serious inconvenience to go to one at a distance. Even when in these circumstances a priest who is in sin has said Mass with contrition indeed, but without confession, he is commanded by the Council of Trent to go to confession as soon as possible afterward. This is a strict ecclesiastical law, but according to the mind of the council it only binds priests, not laymen.

2. When one has been to confession with a view to going to holy communion, but forgot to mention some grievous sin which he afterward remembers, he is not obliged to repeat his confession before communion; it will be sufficient if he mentions it in his next confession. The reason is because the forgotten sin was indirectly forgiven by the absolution which he received, and he has

proved himself sufficiently according to the words of the Apostle.

Even if there be not sufficient time to make a full confession before communion, still confession is obligatory, as it is also when the penitent has cases reserved to the Pope, for now in case of necessity any confessor may absolve directly from papal cases. If the only serious sins which the penitent has are reserved to the bishop, he is not bound to go to confession unless there is a priest present who has faculties for reserved cases, and it is a probable opinion that this holds even if with reserved sins he has grave sins which are not reserved.

3. The old controversy about frequent communion was finally settled by the decree of Pius X, December 20, 1905. The mind of the Church on the question is therein clearly expressed. The decree says in effect: Let frequent and daily communion, a practice which is very much desired by Christ our Lord and by the Catholic Church, be open to all the faithful of whatever rank and condition they be, so that it may not be refused to any one who is in the state of grace, and who approaches the Holy Table with a good and upright intention. This good intention consists in a desire to fulfil the divine will, to be more closely united with God, and by that divine remedy to fight against one's weaknesses and defects, and not to approach out of routine, or vanity, or worldly motives. Venial sin is not an obstacle to daily communion, although it is in the highest degree becoming that daily communicants should be free from all fully deliberate venial sin. The sacraments, it is true, produce their effect *ex opere operato*, and yet because they produce greater effect in those who are better disposed, therefore care must be taken to make

proper preparation for holy communion and due thanksgiving afterward. The confessor's advice should be asked in order that daily communion may be practised with more prudence and with greater fruit, but the confessor should not prohibit daily communion to any one who is in the state of grace and who approaches with an upright intention. Parish priests, confessors, and preachers should frequently exhort the faithful to the practice of daily communion, according to the approved teaching of the Roman Catechism, or the Catechism of the Council of Trent.[1]

## Section II

### *The Dispositions of the Body*

1. Although God looks to the soul and its dispositions rather than to externals, yet, as the Ritual says, those who communicate should approach the altar with humble deportment, and their dress and everything about them should show forth the reverence which they feel for the Blessed Sacrament. Reverence taught the first Christians that the Holy Eucharist should be the first food taken in the day, so that fasting communion very soon came to be a universal practice in the Church. St. Augustine says that it was the custom throughout the whole world in his time, and he traces it back to the times of the Apostles.[2] The Council of Constance says: "This present council declares, decrees, and defines, that although Christ instituted and gave this venerable sacrament to His disciples under both species of bread and wine after supper, yet notwithstanding, the laudable authority of the sacred

[1] Pt. ii, c. 4, q. 58. [2] Decretum Gratiani, c. 54, D. 2, de consec.

canons and the approved custom of the Church has and keeps this observance that this sacrament ought not to be consecrated after supper nor received by the faithful unless they be fasting, except in case of sickness or of some other necessity allowed and admitted by law and by the Church." [1]

The rubrics of the Missal [2] contain the following: "If any one has not kept fast after midnight, though he has taken only water or other drink or food, even as medicine, and in however small a quantity, he can not communicate or celebrate. If remnants of food remaining in the mouth are swallowed, they do not hinder communion, since they are not taken as food but with the saliva. The same holds good if in washing the mouth a drop of water is swallowed inadvertently."

The law of the Church, then, with reference to fasting communion is that the Eucharist may not be received by one who has not kept strict fast from all food and drink, even in the smallest quantity, since midnight. If holy communion is received shortly after midnight, there is no obligation to fast for some time before midnight, although reverence would dictate the advisability of such a course. The law of fasting has been made out of reverence for the Blessed Sacrament, so that violations of it are against the virtue of religion, and sacrilegious.

To constitute a violation of the fast, what is taken must be of the nature of food or drink. Pebbles, wood, paper, hairs, are not food, and if swallowed do not hinder communion. The same is probably to be said of bits of the nails of the fingers, which some people have a habit of biting. The food or drink must also be taken as food or

[1] Sess. xiii. [2] De def. ix.

drink, not *per modum respirationis*, as is said, and must be from without, not from within the mouth. Taking snuff, or smoking, or inhaling a flake of snow with the breath, do not, then, hinder communion, nor the swallowing of blood from the gums or from inside the lips.

Midnight may be reckoned according to the time publicly observed in the place, or by the true time according to the sun, or by the mean time.

2. The law which prescribes fasting communion is a positive ecclesiastical law and admits of exception and excuse. Thus, when in danger of death from whatever cause, one may receive holy communion not fasting. This may also be done if it is not possible to abstain from communion without grave scandal or serious loss of reputation; or when the Blessed Sacrament is in danger of being profaned; or in order to complete the sacrifice of the Mass left unfinished by another priest from sudden illness; or probably in order to consecrate the Viaticum for a dying person who otherwise would be deprived of it. The common opinion is that Mass may not be said by a priest not fasting merely in order that his people may hear Mass on a Sunday; but this reason, taken together with some other, might justify the action.

There used to be a controversy among divines as to whether one who is sick but not in danger of death, and yet can not observe the fast before communion, may be allowed sometimes to communicate not fasting. This controversy has to a great extent been set at rest by the decree of Pius X, December 7, 1906. This decree "kindly allowed those who have been sick in bed for a month, without a well-grounded hope of their speedy recovery, although they may have taken something by way of

drink, to receive with the advice of their confessor holy communion once or twice in the week, if they live in houses where the Blessed Sacrament is reserved, or where Mass can be said by indult, and in other cases once or twice a month; with the obligation of observing the rubrics of the Ritual on the point."

After receiving Viaticum a sick person who continues to live for some time afterward may receive holy communion again,[1] practically as often as his devotion urges him thereto and the priest's occupations will allow of its being brought to him. As long as he remains in danger of death, holy communion should be given as Viaticum, with the form, *Accipe frater*. No merely material uncleanness without moral fault, or mere bodily unsightliness, is a bar to holy communion. Married people are advised to abstain from marital intercourse before going to holy communion, but there is no strict obligation to do so.

[1] Holy Communion may now be given twice a week to all sick persons who fulfill the other conditions prescribed by Pius X. C.J.C., can. 858, sec. 2.

# Part II

# THE EUCHARIST AS A SACRIFICE

## CHAPTER I

### THE NATURE OF THE SACRIFICE OF THE MASS

1. The Council of Trent teaches that the Eucharist is not only a sacrament but is also a sacrifice, instituted by Our Lord at the Last Supper to represent and perpetuate the memory of the sacrifice which He was about to offer on the cross, and to apply its fruits to the souls of men. "He therefore, Our God and Lord, though He was about to offer Himself once on the altar of the cross unto God the Father by means of His death, there to operate an eternal redemption; nevertheless, because that His priesthood was not to be extinguished by His death, in the last supper, on the night in which He was betrayed — that He might leave to His own beloved Spouse the Church a visible sacrifice, such as the nature of man requires, whereby that bloody sacrifice, once to be accomplished on the cross, might be represented, and the memory thereof remain even unto the end of the world, and its salutary virtue be applied to the remission of those sins which we daily commit — declaring Himself constituted a priest for ever according to the order of Melchisedec, He offered up to God the Father, His own body and blood under the species of bread and wine; and under the symbols of those same things He delivered (His own body and blood) to be

received by His apostles, whom He then constituted priests of the New Testament; and by those words, *Do this in commemoration of Me,* He commanded them and their successors in the priesthood to offer (them); even as the Catholic Church has always understood and taught." [1]

A sacrifice is defined to be an offering of some visible object made to God by the performance of a sacred action on the part of a priest, or publicly deputed minister, by which we confess the supreme lordship of God. A sacrifice, therefore, differs from an ordinary offering in that it is an act of public worship paid to God alone by a duly authorized minister, who by slaying the victim or in some way changing it, proclaims the supreme dominion of God over all things.

The sacrifice of the Eucharist is called the Mass, and it may be offered for all the ends for which the various sacrifices of the Old Law were instituted by God. It is the supreme act of worship which we pay to God, and under this respect it is called latreutic; it is eucharistic, inasmuch as through it we render thanks to God for His graces and benefits; it is impetratory, inasmuch as it placates the anger of God which has been roused against sin and the sinner; and it satisfies the justice of God and thus remits the punishment due to sin.

The introductory portion, up to the offertory, is called the Mass of Catechumens, the principal parts of the Mass being the offertory, the consecration, and the communion. There is much difference of opinion among divines as to what constitutes the essence of the sacrifice of the Mass. Some place its essence in the communion, others in the consecration, others in the consecration together with the

[1] Trent, sess. xxii, c. 1.

communion. More probably the consecration of both species, by which the death of Christ is mystically represented by the separate consecration of the bread and wine, contains the whole essence of the sacrifice. The question belongs rather to dogmatic than to moral theology.

2. The Mass is a representation and a reproduction in an unbloody manner of the sacrifice of Our Lord on the cross. The principal minister, Jesus Christ, is the same; the victim is the same; the only difference is the manner of offering, as the Council of Trent teaches. A rightly ordained priest is the secondary minister, who in the name of Christ and of the Church offers the sacrifice to God. In so far as it is the action of Christ, the Mass produces its effect like the sacraments *ex opere operato*, and does not depend for its efficacy on the holiness or other dispositions of the priest. But it is also the action of the priest, and of the faithful in whose name he acts; and under this respect it produces its effect *ex opere operantis*.

All the faithful, by virtue of the communion of saints, but especially those who assist at Mass, partake of its fruits and benefits. Those fruits are, as we have seen, latreutic, eucharistic, impetratory, propitiatory, and satisfactory; so that in the Mass we have a most excellent means of fulfilling all the ends of religion. By it and through it we offer to God the highest act of worship which it is in our power to offer; we give Him thanks for His continual benefits to us, we ask in the most efficacious manner for what we and others stand in need of, we propitiate His just anger, and make satisfaction for our sins.

The priest who celebrates performs an action in the highest degree pleasing to Almighty God, and meritorious for himself. Moreover, just as prayer may be offered for

a special intention, and as the sacrifices of the Old Law were offered for the needs of those who presented the victim, so the Mass also may be celebrated by the priest for some definite intention. The special or ministerial fruit of the Mass is thus applied by the priest according to the intention with which he offers it.

3. Apart from special prohibitions, the Mass may be offered for all those for whom the sacrifice of the cross was offered, and whom it can benefit. It may be offered for all the faithful, living and dead. The Council of Trent defined that the souls in purgatory are helped by the sacrifices of the faithful, and it is at least theologically certain that the fruits of the Mass are to some extent which is known to God applied to them *ex opere operato*, when Mass is said for that intention. It may also be offered for the conversion of infidels, and in thanksgiving for all the graces and glory which God has bestowed on the blessed in heaven.[1] The damned in hell can receive no benefit from our prayers or sacrifices. The Church, indeed, by her sentence deprives excommunicated persons of the common suffrages of the faithful, but theologians dispute about the effect of this law with reference to the application of the Mass to excommunicates. Some hold that it affects only such as are to be avoided on account of being excommunicated, such, namely, as have been excommunicated and denounced by name, or notorious strikers of clerics whose crime can not be kept secret. Others hold that the prohibition to say Mass for excommunicated persons extends even to such as do not come under the two heads just mentioned, and who are tolerated according to the decree of the Council of Constance, *Ad vitanda*. Others again maintain that the prohibition does

[1] Mass may be offered for anybody living or dead, but only privately and with precautions to avoid scandal for excommunicates.

extend to all excommunicated persons, but that it is a law which affects only the public offering, not the private offering of Mass for such people. The latter opinion seems certainly probable.

4. Infinite is the worth and dignity of the sacrifice of the Mass, for it is the same as the sacrifice on Calvary, which was capable of redeeming innumerable worlds. This is acknowledged by all theologians, but they are not agreed as to whether the actual fruit derived from a Mass is also infinite. Those fruits are, indeed, greater or less in proportion to the dispositions of the person to whom they are applied. But while St. Alphonsus and others are of opinion that a Mass offered for any number of intentions will benefit each one as much as if it were offered for him alone, others hold that the fruit of a Mass is determinate in quantity, and that if it is offered for many each one receives less than he would do if it were offered for him alone. The latter seems the preferable opinion, as it explains better the practice of the Church according to which Mass is offered for individuals, living and dead. If the first opinion were correct, charity would require that every Mass should be offered for all who are in need, for no individual would be the loser; every one would derive all the benefit from the Mass of which he was capable. This opinion, too, is more in keeping with the nature of the sacraments, of which the fruits seem to be limited in quantity. Otherwise there would be no use in administering several sacraments to a dying person when out of his senses, as is the practice of the Church. Whichever opinion be true, it is against justice to offer only one Mass in satisfaction of the obligation of saying several, when several stipends have been received. Alexander VII

and, moreover, only for their conversion if they are to be avoided as excommunicates. C.J.C., can. 809; can. 2262, sec. 2, 2°.

condemned the following proposition: "It is not against justice to receive stipends for many Masses and to say only one. Neither is it against fidelity, even if I promise on oath to him who gives a stipend that I will not offer the Mass for any one else."

Nothing, however, prevents the priest from having a second intention, as it is called, even when he says Mass for a stipend. By this second intention the priest intends that if for any reason the Mass can not benefit him for whom the first intention offers it, then the fruit may go to the second. Or, if in fact it be true that the fruit of a Mass is infinite, and capable of equally benefiting any number of persons, then the priest by his second intention desires that others should benefit by his Mass.

## CHAPTER II

### THE APPLICATION OF MASS

1. The application of a Mass is the intention with which the priest who says it wishes that it should accrue to the benefit of a certain person or persons. Such a special act is only required for the application of the ministerial or special fruit, as it is called; for the priest himself derives fruit from his Mass, as likewise do those who assist at it, and the faithful in general, without any special application.

As it belongs to one who prays to choose the intention for which he offers up his prayer, so the application of his Mass belongs to the priest. A superior may indeed prescribe the intention for which a Mass is to be offered, but he who celebrates the Mass must make the actual application. This should be done before the consecration is finished, for according to the *common opinion* the essence of the Mass consists in the consecration, and an action can not receive its direction from an intention which is only formed after the action is accomplished. Probably, however, it will be sufficient if the intention is formed between the two consecrations.

2. It is not necessary that the intention by which Mass is applied should be actual, or even virtual; it is sufficient if it be habitual, or made once for all and not afterward revoked.

When Mass is said for a stipend it is not necessary for the priest to know precisely what the intention is for which he is desired to say Mass; it is sufficient if he say Mass for the intention of the giver of the stipend. Clement VIII forbade priests to offer Mass for the first who should give a stipend for that purpose, and if no one actually intended to ask for a Mass when a priest celebrated with such an intention the Mass would not be applied.

A priest does not sin if he celebrates without any special intention, but it is always better to have one, as then the Mass will be more fruitful. When a priest celebrates for a stipend he may not divide the fruits of the Mass, applying the satisfactory or other fruit to the intention of the giver, and another fruit to some other intention. The whole fruit of the sacrifice must go to the giver of the stipend. When, however, a Mass is ordered by a superior in thanksgiving for some blessing, it will not be wrong to apply the other fruits for other intentions which in no way interfere with that prescribed by authority.

## CHAPTER III

### THE OBLIGATION OF APPLYING MASS

1. Priests may be bound to say Mass for a definite intention on various grounds. Those who hold a benefice are frequently obliged to say Mass, either every day or on certain fixed days, for the intentions prescribed by the founder of the benefice. The conventual Mass, which should be said every day in cathedral, collegiate, and conventual churches, ought to be applied for the benefit of the souls of benefactors. In English-speaking countries, however, there are few beneficed clergy, and so questions concerning their obligations are hardly practical.

The Council of Trent [1] declares that by divine precept it is enjoined on all who have the cure of souls to offer sacrifice for their flock. Bishops, therefore, and regular prelates, who have the full cure of souls, are bound by divine law to say Mass for those committed to their charge. Parish priests are of ecclesiastical institution, and they have not the full cure of souls committed to them. How far their duties extend depends on ecclesiastical law. That law obliges them as well as bishops to say Mass for their flock every Sunday and holyday of obligation, even on those feast-days of obligation which have been suppressed. This obligation is at the same time real and personal. It is real in the sense that if for any reason

[1] Sess. xxiii, c. 1, de Ref.

a bishop or parish priest can not fulfil it on any particular day, they are under the obligation of providing that it should be fulfilled by some other priest. It is personal in the sense that they must as far as possible fulfil it in person; it will not be sufficient to substitute another priest in their place.

As missionary priests in Great Britain and in the United States are not parish priests, though they have the cure of souls, the question whether they are bound to offer Mass for their flock like parish priests depends on whether the Church has annexed this obligation to their office. The Sacred Congregation de Propaganda Fide declared, December 3, 1866, that they are not strictly bound to say Mass for their flock, although it is becoming in charity that they do so.

2. The ecclesiastical superiors of priests may issue a command that Mass be applied for some special intention. When this is done the command must of course be obeyed by all whom it concerns. The matter of such a precept is certainly grave, and so there will be a serious obligation of complying with it, if the superior intended to issue a strict precept. This, however, is not always or necessarily the case; and in particular instances, if there is question of determining the gravity of an obligation arising from such a precept, the intention of the superior who gave it will have to be examined according to the ordinary rules of interpretation.

3. A priest may bind himself by promise to say Mass for a particular intention, and then he will be bound to say it either in justice or at least out of fidelity, just as he is bound to fulfil his other promises.

4. Finally, priests are bound in justice to say Mass for

the intention of those from whom they have received a stipend for the purpose. The stipend is not the price of the Mass, for this can not be bought and sold without committing the grave sin of simony. The stipend is given to provide for the support of the priest, who in return undertakes to say Mass for the giver of the stipend. In the early Church the faithful used to bring bread and wine to the priests, who selected from what was offered enough for the sacrifice, and reserved the rest for their support. This was found to be inconvenient, and in course of time the faithful who wished Mass to be offered for their intention contributed a sum of money for the support of the priest. This method, after all, is in substance what St. Paul alludes to: "Know you not that they who work in the holy place, eat the things that are of the holy place; and they that serve the altar, partake with the altar." [1] Simony may indeed be committed in transactions concerned with the Mass and stipends, but such sordid practices should not be presumed to be of ordinary occurrence.

Although a priest who accepts a stipend for a Mass does not sell the Mass, yet he enters into a strict contract with the giver of the stipend, and binds himself in justice to apply the Mass for his intention. He will, therefore, commit a grave sin against justice if he fail to fulfil his obligation, and he must restore the stipend which he received, but which he has no title to keep. Not only is the priest who has accepted a stipend bound in justice to say a Mass, but justice also requires that he should observe all the conditions of the contract into which he entered concerning the quality of the Mass, the place, and the time of celebration. If the time is not fixed by the terms of the

[1] 1 Cor. ix. 13.

contract, the decree of the Sacred Congregation of the Council, May 11, 1904, assigned one month from the time of receiving the stipend as the limit within which one Mass must be said, six months for one hundred Masses, and a longer or shorter period for a greater or less number. No priest may accept more stipends than he can satisfy within a year, except with the explicit or implicit consent of the donor. If he has not said the Masses stipulated for within the year, he is required to hand over the stipends to his ordinary. If founded Masses have not been said during the year within which they fell due, the stipend for them is also to be handed over to the ordinary. Priests may hand over stipends which they have not been able to satisfy within the time prescribed to their ordinary, to the Holy See, or to other conscientious priests on whom they can rely. In the latter case they have the duty of seeing that the obligation has been fulfilled; in the former they are released from all such burden. The Church wishes to prevent anything that has even the appearance of trading in stipends for Mass, and so it is prescribed that the whole stipend which was offered must be given to the priest who says the Mass, and nothing subtracted from it, nor may anything else be given in its place. It is specially forbidden to give stipends for Masses to booksellers, merchants, and managers of magazines, who sometimes collected them, and sent their wares instead of the money to priests who said the Masses. Buying books, or Church furniture, or anything else, by saying Masses is forbidden.[1]

Any one who is guilty of violating these prohibitions, if a priest, incurs *ipso facto* suspension reserved to the Holy See; if an inferior cleric, he is suspended from the exercise of his orders and made incapable of ascending higher;

[1] It is now left to the ordinary to punish clerics who offend in this matter. C.J.C., can. 2324.

if a layman, he incurs excommunication reserved to the ordinary.

Only the bishop can accept founded Masses for secular churches, and generals or provincials for those of regulars. When the income from founded Masses is reduced in value from any cause, the Holy See alone is competent to reduce the number of Masses to be said according to the rules of equity.

The amount of the stipend for Masses, whether founded or manual, is different in different countries. It belongs to the ordinary to fix the amount, and when fixed by him it must be adhered to by both the secular and regular clergy. A priest who exacted more than the fixed amount for a Mass would commit a sin against justice, and be bound to make restitution of what he had charged in excess.

## CHAPTER IV

### THE TIME FOR SAYING MASS

1. By the common law of the Church Mass may only be said once in the day except on Christmas Day, when a priest may say three Masses.[1] Mass may be said on every day in the year, but on the three last days in Holy Week Low Mass is forbidden. On those days in cathedral, collegiate, and parish churches, High Mass should be sung as far as possible. In parish churches where High Mass can not be sung, but three or four clerics can be got to serve, the ceremonies should be carried out according to the memorial of rites drawn up by command of Benedict XIII. In parish churches where not even this can be done, the bishop may give leave for a Low Mass on Holy Thursday, and he may also, for the convenience of the sick, allow a Low Mass to be said in other churches before the High Mass.

2. Mass may be said twice by a priest on the same day if the necessity of the people requires it. The bishop is the judge as to when it is necessary, as it will be if the people can not all get to one Mass on account of the distance at which they live from the church, or because the church is too small to contain them all at once. Moreover, in missionary countries it is quite common for priests to have a special faculty of celebrating twice in the day on

[1] Mass may now be said three times on the day of the Commemoration of all the Faithful Departed. C.J.C., can. 806, sec. 1.

Sundays and holydays of obligation. The only cause recognized for the lawful use of this faculty is the necessity of the people, of which again the bishop is the judge, and it is expressly forbidden to take a stipend for the second Mass. The use of the faculty is not lawful when another priest can be got to say the Mass required by the necessity of the people.

3. According to the present discipline of the Church, Mass may be said at any time between daybreak and midday.[1] The law will be kept if Mass is not finished before daybreak or begun after midday. The necessity of the people or of the priest is a sufficient reason for celebrating somewhat earlier and later than the ordinary times, and regulars have privileges by which they may for just cause begin Mass much earlier and much later than the legal time.

NOTE. — In the United States the bishops have from the Holy See a faculty, which they can communicate to all the priests in their respective dioceses laboring in the sacred ministry, by which they can celebrate Mass one hour before daybreak and one hour after midday, "*per unam horam ante auroram et aliam post meridiem.*" This privilege is understood to mean that a priest may begin Mass one hour before the time at which he could begin according to the general law of the Church, and similarly that he may begin one hour later than would be permitted by the general law. Clement XI issued a prohibition regarding the time for the celebration of Mass: "*Mandamus ne Missarum sacrificia ante auroram celebrentur et usque ad meridiem solum protrahantur.*" Afterward, in 1724, Benedict XIII permitted that Mass be celebrated

[1] Mass may be said at any time between an hour before daybreak and one hour after midday. C.J.C., can. 821, sec. 1.

one-third part of an hour (twenty minutes) before the aurora, and one-third part of an hour after midday. This signified, as Benedict XIII himself declared, that Mass could begin not earlier than twenty minutes before the aurora, and should be finished not later than twenty minutes after midday. A privilege was granted to the Benedictine Order of celebrating in their own churches for a just reason two hours after midnight, which privilege is extended to all regulars. Pius VI granted to the Congregation of the Purity a faculty that the priests of the Congregation could *in perpetuum* celebrate two hours before the aurora and two hours after midday. Without any privilege a bishop may permit in a particular case for just cause that Mass be celebrated an hour before daybreak or an hour after midday, and even annually for a special solemnity; but he could not give permission for all the priests of his diocese to anticipate the celebration or defer it beyond the time fixed by common law. Superiors of Religious Orders having solemn vows may also dispense their subjects in particular cases, so that, for example, a priest not reaching the end of his journey before two or three o'clock P.M. might be permitted to say Mass, provided, of course, that he had kept his fast. The dawn of daybreak, it may be remarked, is considered as beginning when the sun enters the eighteenth degree below the horizon. The hour at which it begins varies according to the latitude of the place, and in places of the same latitude it is different at different times of the year. There are places in the United States where in summer the aurora begins at midnight, so that there a priest might commence his Mass immediately after without any privilege. — END OF NOTE.

His Holiness Pius X by a decree of the Holy Office dated August 1, 1907, graciously permitted in future three Masses or only one to be said according to the rubrics on the night of the Nativity in all convents of nuns who have enclosure, and in other Religious institutions, pious houses, and clerical seminaries, in which the Blessed Sacrament is habitually reserved. Holy communion may be administered to all who ask for it at these Masses and any one who hears one or more of them satisfies the precept of hearing Mass on that day.[1]

[1] Acta Sanctæ Sedis, xl, p. 478.

## CHAPTER V

### WHERE MASS MAY BE SAID

1. By ecclesiastical law Mass may regularly be said only in churches and oratories dedicated solely to the service of God, and therein on duly consecrated altars.[1] If, however, there be no church in the place, or if it be in ruins, or if it be too small to hold the number of worshipers, Mass may be said in a tent or in the open air on a portable altar with the leave of the bishop, if time permits of this being asked.

A bishop can erect public oratories in which Mass may be said in Religious institutions, in monasteries and convents, in seminaries, hospitals, prisons, and in the bishop's own residence. Bishops also enjoy a personal privilege of saying Mass on a portable altar even in private houses where they happen to be staying.

The Council of Trent[2] forbade bishops to allow priests to say Mass in private houses, and in consequence of this law and of repeated answers of the Roman Congregations, it is now settled that bishops have no power to grant leave for purely domestic oratories in private houses.

Note. — Although the faculty of granting the privilege of a private oratory is reserved to the Holy See, the bishops of the United States retain the faculty of celebrating Mass "*sub dio et sub terra, in loco tamen decenti,*" and of

[1] Trent. sess. xxii, Decree on things to be observed in Mass. [2] l. c.

communicating it to priests engaged in the ministry within their dioceses. (See Form I, Arts. 23, 28.) It is to be noted, however, that the S. C. of Propaganda declared that the condition, "*si aliter celebrari non possit*," occurring in Article 23, is to be applied to the faculty of saying Mass *sub dio et sub terra*, and, besides, that under that faculty a bishop could not permit each priest to say Mass in a private house. "*Præterea non ea est earundem facultatum extensio, qua Amplitudo Tua quibusvis sacerdotibus etiamsi ægrotis valeat permittere ut in privatis ædibus super altari portatili Sacrum faciant.*" What may be done practically in the United States, as regards the place of celebration, can be gathered from the Second Plenary Council of Baltimore (n. 362): "*Statuimus sacerdoti nulli, vi facultatum generalium sibi concessarum celebrandi in quocumque loco decenti, licere Missam celebrare in ædibus privatis, nisi in stationibus, et in ædibus quas Ordinarius designaverit: aut dum actu missionis exercitiis, procul ab aliqua ecclesia, dat operam. Quod si Ordinarii alias concedant licentiam celebrandi in privatis ædibus ob speciales circumstantias, iis commendamus pro una tantum vel altera vice concedere.*" Hence a priest by the general faculty of celebrating in any becoming place can not say Mass in private houses except in the circumstances here stated. On the other hand, a bishop in this country may still give leave under special circumstances to say Mass in a private house, but he is recommended not to grant such leave for a notable time, "*pro una tantum vel altera vice.*" — END OF NOTE.

The power to do this is now reserved to the Holy See. If there is an oratory duly erected on board ship, Mass

may be said there when circumstances permit. The Holy See also grants leave for Mass to be said on board ship on a portable altar even when there is no permanently erected oratory on board. A priest who has obtained and desires to use this privilege is bound to observe the conditions under which it is granted. Those conditions are that the ship is safe and at a distance from shore, that the sea is tranquil, and that another priest or a deacon is at hand to hold the chalice in case of danger when the ship rolls. Mass should not be said in the passengers' berths unless everything has been arranged so as to show due reverence to the Blessed Sacrament.

2. If a church or public oratory has been polluted by the perpetration therein of certain crimes, it is forbidden to say Mass there until it has been reconciled. The crimes which pollute a church are homicide, the shedding of human blood, consummated sin against chastity,[1] and burial in the church of a non-baptized person, or of one who is to be avoided as excommunicate. In order that these crimes may pollute a church they must be mortally sinful, committed in the church itself, not merely in its neighborhood, and they must be publicly known.

NOTE. — The general law regarding the reconciliation of churches, which after being consecrated or only blessed become polluted, is thus expressed by Wernz (Jus Decretalium, vol. 3, n. 444). *"Reconciliatio ecclesiæ consecratæ ab Episcopo loci aut de ejus vel Prelati nullius vel Vicarii Capitularis vel Vicarii Generalis ex mandato speciali licentia ab alio Episcopo servatis ritibus præscriptis licite et valide est facienda: at valida est, si fiat ab Episcopo non habente jurisdictionem in loco.* (Cf. S. R. C. August 19, 1634, ad 3.)

[1] A church is not polluted now by a consummated sin against chastity, but it is polluted by being used for impious or sordid purposes. C.J.C., can. 1172, sec. 1.

*Simplici vero sacerdoti etiam aqua lustrali per episcopum benedicta ab Ordinario loci concedi nequit, sed privilegium vel indultum apostolicum requiritur. Quodsi ecclesia polluta fuerit tantummodo benedicta, reconciliatio fieri potest a quolibet sacerdote, quem Ordinarius loci,* i.e., *Episcopus vel Prælatus nullius vel Vicarius Capitularis vel Vicarius Generalis ex mandato speciali delegavit.*" According to the opinion here set forth, when a consecrated church has been polluted, it can not be licitly reconciled except by the bishop of the place or by another bishop specially appointed by the bishop of the place or by his vicar-general or vicar-capitular or by a *prælatus nullius;* however, it is a valid reconciliation when the prescribed rite has been performed by any bishop, though he have no jurisdiction in the place. Apart from a privilege or apostolic indult a bishop can not delegate a priest to reconcile a church which was consecrated and is polluted, this authority being reserved to the Sovereign Pontiff. If the church was blessed, not consecrated, a priest should be specially delegated by the ordinary of the place to reconcile it. The reader will find this whole question treated at length by Gasparri. (*De SSma Eucharistia*, vol. 1, n. 256, etc.)

In the United States the bishops have the following faculty (Art. 13, Form I.): "*Delegandi simplicibus sacerdotibus potestatem benedicendi paramenta et alia utensilia ad sacrificium Missæ necessaria, ubi non intervenit sacra unctio; et reconciliandi ecclesias pollutas aqua ab Episcopo benedicta, et in casu necessitatis, etiam aqua non benedicta ab Episcopo.*" Hence a bishop in this country can authorize a priest to reconcile polluted churches, whether consecrated or only blessed. Water blessed by the bishop should be used when the church has been consecrated,

unless in the case of necessity, when the priest himself can bless water for the purpose. In the rite of reconciling a consecrated church the priest should follow the Roman Pontifical. When there is question of reconciling a church which has been only blessed, the priest uses ordinary holy water blessed by himself or by any priest, and follows the rite prescribed by the Roman Ritual. (See Putzer, n. 135; Gasparri, n. 257.) — END OF NOTE.

A consecrated church which has been polluted should be reconciled by a bishop according to the form prescribed in the Pontifical; but if the bishop is engaged, he may authorize a priest to do it in his place with water blessed by the bishop. If the bishop live at a distance, regulars have a privilege of reconciling their churches with water blessed by themselves. If the church was blessed and not consecrated, it may be reconciled by a priest according to the form given in the Ritual.

Private oratories are not polluted, even if any of the above crimes be committed in them, and so they do not need reconciliation.

Mass may not be said in a church or oratory which has lost its consecration. This happens when the greater part of it is destroyed at one and the same time, or when a new portion is added to it and what is added is greater than the old part. A church does not lose its consecration if the roof falls in or if the plastering of the walls is renewed. When a church loses its consecration it must be reconsecrated, or at least blessed, before Mass be again said in it.

When a church is polluted the altars in it are also polluted, but altars do not lose their consecration merely

because the churches in which they are placed are desecrated. A fixed altar loses its consecration if the altar-stone is loosed from its foundation, and both fixed and portable altars lose their consecration if the tomb where the relics are placed is violated, or in consequence of a large fracture.

3. The sacred vessels and vestments lose their consecration when they are broken or torn so as to lose their shape. A chalice also loses its consecration when it is regilded.[1] When the sacred vessels or vestments have lost their consecration, they must be mended and be reconsecrated before use.

[1] Chalices and patens when regilded do not lose their consecration. C.J.C., can. 1305, sec. 2.

## CHAPTER VI

### REQUISITES FOR SAYING MASS

Besides what we have seen in the last chapter, the Missal prescribes various other requisites for the due celebration of Mass. The following especially call for mention here: three altar-cloths, two wax candles, the ordinary priestly vestments, a server, a chalice and paten, clean corporal and purificator of linen, and a Missal. The altar linen and the vestments should be blessed by a bishop or by a priest with specially delegated faculties for the purpose.

Note. — Under Article 13, Form I, the bishops of the United States have power, "*Delegandi simplicibus sacerdotibus potestatem benedicendi paramenta et alia utensilia ad sacrificium Missæ necessaria, ubi non intervenit sacra unctio.*" Hence a priest to whom this power is communicated can bless the sacerdotal vestments, chasuble, stole, etc.; also corporals, palls, altar-cloths, ciborium, pyxis, and lunula, since holy oil is not used in blessing them. But they can not under this article consecrate chalices, patenas, altar-stones, or bells, for each of which the use of holy oil is required. However, by Article 7, Form C, a bishop in this country can depute a priest to consecrate chalices, patenas, and altar-stones, in which case the priest deputed must use holy oil consecrated by the bishop and follow the rite prescribed in the Roman

Pontifical. The bishop may also, according to Article 12 of the same Form C, delegate a priest to bless bells when he can not himself without grave inconvenience perform the function, provided that the rite of the Roman Pontifical be followed, along with the use of oil and water blessed by the bishop, or, when a grave cause exists, without water blessed by the bishop. In blessing vestments and other requisites for Mass which do not admit of the use of holy oil, the priest having the faculty of blessing such articles should follow the rite prescribed in the Roman Ritual, and not that of the Pontifical, according to a decree of the S. C. R. (March 16, 1876). A difference is therefore to be observed between those objects in whose blessing or consecration the use of holy oil is prescribed and those in which holy oil is not used; the Roman Pontifical is to be followed in the former, while in the latter the Roman Ritual should be observed. — End of Note.

The chalice and paten should be of silver, and gilded at least on the inside. They should also be consecrated by a bishop. The difficulty of procuring wholly wax candles was reported to the S. R. C., which answered, December 14, 1904, that bishops should as far as possible see that the two candles for Mass should at least have a greater proportion of beeswax than of other material, and that private priests need not anxiously inquire about the quality of the wax.

Of the vestments, at least the alb, chasuble, stole, and maniple are required under grave precept; the amice and the girdle, as also a pall, purificator, and crucifix, are required under a less serious obligation.

The server should be a Catholic and of the male sex, but if one can not be procured, a woman may make responses from outside the altar rails.

NOTE. — By the common law of the Church it is prohibited *sub gravi* to say Mass without a server; it is held, however, that a grave cause or necessity excuses from this prohibition, *e.g.*, that the faithful may not be without Mass on a day of obligation, or, according to many, that the priest himself may fulfil the obligation of hearing Mass. In the United States the bishops are empowered by the Holy See under Article 23, Form I, to celebrate Mass *sine ministro*, and may communicate the faculty to priests laboring in their respective dioceses. There is, however, a condition attached to the exercise of this faculty on the part of a bishop or priest, *viz.*, "*Si aliter celebrari non possit.*" This impossibility should be interpreted so that the faculty herein conferred would mean something more than what, according to theologians, would be permissible without such faculty; otherwise the faculty would be useless. Hence it would appear that a priest having this faculty might, even on days which are not of obligation, say Mass without a server, when he can not procure one. For example, if a priest having to leave very early on a journey wishes to say Mass out of devotion before leaving, he would seem to keep within the limits of this faculty by celebrating *sine ministro*. It may be useful to note that, when this faculty is made use of, the priest himself should make the responses prescribed to be made by the server; but he should omit the second recital of the Confiteor (S. C. R. September 4, 1875), and in the prayer *Misereatur vestri*, etc., substitute *nostri* for

*vestri*, as also in the response, *Suscipiat*, etc., instead of *manibus tuis*, he should say *manibus meis*. See rubrics of the Missal, *Ritus servandus in celebratione Missæ*, VII, 7.

It is not at all clear that, when a priest having the foregoing faculty would say Mass without a Catholic server of the male sex, he should procure or lawfully could procure a female to give the responses outside the communion railing. It would seem better not to permit her to make the responses, since, if she did make them it might excite the *admiratio populi*. In convents, however, where Mass is often celebrated without a male server, there is a widely extended practice of having a Sister outside the sanctuary make the responses. So long as the Holy See does not pronounce against this practice, it may be held that it is not unlawful even in the United States, where priests, "*si aliter celebrari non possit*," may say Mass without a server to permit a Sister outside the sanctuary to give the responses. — End of Note.

It is a disputed point among theologians whether the proper color of the sacred vestments is of strict precept; and they deny that there is a strict precept with regard to the use of a veil for the chalice, a burse, and a stand for the Missal.

## CHAPTER VII

### THE RUBRICS OF THE MISSAL

1. In the rubrics of the Missal the Church has laid down a series of minute rules for the celebration of Mass. Their number and minuteness show her solicitude concerning the proper performance of this divine sacrifice. Those which have reference to the Mass itself are in general preceptive, and bind under pain of sin. Grave sin, then, is committed by violating the rubrics of the Mass in serious matters; venial sin is committed by their violation in smaller matters. If a notable or important portion of the rite is omitted, or if notable additions are made to it by private authority, or any considerable change be made in it, there is a serious violation of the law. The rubrics which ordain that certain portions of the Mass be said in a loud or low or middle tone of voice only bind under venial sin, and so, if their observance would cause annoyance to other priests who are saying Mass, they cease to bind. Similarly, if through infirmity a priest is unable to observe some smaller rubrics, it is not the mind of the Church that he should be obliged to abstain from celebrating the holy mysteries.

It is a probable opinion that those rubrics in the Missal which have reference to what should be done out of Mass are only directive, not strictly preceptive so as to bind under pain of sin.

2. The general rule is that the Mass must agree with the Office which the calendar prescribes to be said. However, by the decree S. R. C., December 9, 1895, when Mass is said in a church or public oratory which is not one's own, which uses a different calendar, and celebrates a feast of double or higher rite, the Mass must always agree with the calendar of the church or public oratory, and not with the Office of the celebrant.

3. When Mass has been once begun it may not be broken off without grave reason, even before the consecration. After the consecration a still graver cause is required, as, for example, the sudden breaking out of fire in the church, when the sacred species might be at once consumed and the Mass brought to an end. Moreover, even temporary interruptions of Mass are forbidden except after the Gospel, according to custom. The prohibition is stricter according to the greater solemnity of the part of the Mass where there is question of interruption. However, for good cause, an interruption may be permitted before the offertory; to justify an interruption between the offertory and the consecration a graver cause is required, and a very grave cause after the consecration.

# BOOK V

## THE SACRAMENT OF PENANCE

### CHAPTER I

#### THE NATURE OF PENANCE

1. Penance is both a virtue and a sacrament of the New Law. For as the Council of Trent teaches: "Penitence was indeed at all times necessary in order to attain to grace and justice for all men who had defiled themselves by any mortal sin, even for those who begged to be washed by the sacrament of Baptism; that so their perverseness renounced and amended, they might with a hatred of sin and a godly sorrow of mind detest so great an offence of God. Wherefore the prophet says, 'Be converted and do penance for all your iniquities, and iniquity shall not be your ruin.' The Lord also said, 'Except you do penance, you shall also likewise perish'; and Peter, the prince of the apostles, recommending penitence to sinners who were about to be initiated by Baptism, said, 'Do penance and be baptized every one of you.'" [1] God, therefore, has always required repentance or penance on the part of the sinner as a necessary condition for forgiveness. The virtue of penance may be defined as a habit inclining the sinner to hatred and detestation of his sin. He may be moved to this hatred and detestation by various motives, as, for example, by the thought of the

[1] Sess. xiv, c. 1.

goodness of God, who deserves better treatment than to be offended by the sinner, by the feeling of gratitude toward God for His benefits and mercies, by the sentiment of justice which induces the sinner to make reparation for the wrong which by sin he has inflicted on the majesty of God. Penance may thus be a general virtue with various motives, but theologians agree that it is also a special virtue with a particular motive of its own. More commonly they assign as this motive the hatred of sin as being an offence against God, something at which God is rightly and justly angered and displeased, and for which satisfaction must be made to God before peace and harmony can be again established between Him and the sinner.

Our Lord Jesus Christ instituted the sacrament of Penance, by which the sins committed after Baptism might be forgiven on the sinner's repentance. As the Council of Trent teaches: "Nevertheless, neither before the coming of Christ was penitence a sacrament, nor is it such since His coming for any one previously to Baptism. But the Lord then principally instituted the sacrament of Penance when being raised from the dead He breathed upon His disciples, saying, 'Receive ye the Holy Ghost: whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained.' By which action so signal, and words so clear, the consent of all the Fathers has ever understood that the power of forgiving and retaining sins was communicated to the apostles and their lawful successors for the reconciling of the faithful who have fallen after Baptism." [1]

Penance may be defined as a sacrament of the New Law

[1] Sess. xiv, c. 1

instituted by Christ after the manner of a judicial process for the remission of sins committed after Baptism by a priest's absolution given to the contrite sinner who has confessed his sin to him.

This sacrament is instituted after the manner of a judicial process, as may be gathered from the very words of institution: "Whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained," said our blessed Lord; not of course that the apostles were empowered to forgive or not to forgive sins according to their own pleasure. They were bound to exercise the power entrusted to them according to the intention of Him who had given it, so that as faithful dispensers of the mysteries of God they were to forgive the sins of those who were worthy of forgiveness, and to dismiss without forgiveness those who were unworthy. But how could they know who was worthy and who was unworthy, and what sins they could forgive and what they could not? Evidently only by the sinner acknowledging his sins and showing that he repented of them, or on the contrary by his showing the want of the necessary dispositions. And so we gather from the words of institution of this sacrament what the tradition of the Church teaches, that for the forgiveness of sin in the sacrament of Penance the sinner must in sorrow confess his sin, and then it will be forgiven by the absolution of the priest. In this we have the substance of a judicial process, inasmuch as the sinner is the criminal who is witness against himself, and the priest is the judge who according to the merits of the case absolves the sinner and remits the sin in the name of God, or by not absolving the unworthy sinner retains his sin and condemns him to go unpardoned.

2. The effects of a fruitful reception of this sacrament

are the forgiveness of all mortal sins and of all venial sins which are confessed with due sorrow, the consequent remission of the eternal punishment due to mortal sin, and a partial remission according to the dispositions of the penitent of the temporal punishment which his sins have deserved.

Sins which are confessed to a priest who has the requisite jurisdiction to absolve them are forgiven directly by virtue of the power of the keys. On the other hand, if without fault on the part of the penitent some sin is not confessed and the penitent has the requisite sorrow, the sin will be forgiven indirectly, inasmuch as the absolution will take its effect and infuse sanctifying grace into the soul, and this sanctifying grace expels all grievous sin from the soul. The absolution will also be indirect when the priest has not faculties for some sin or sins confessed, but for some special reason he is justified in giving the penitent absolution.

3. The Council of Trent[1] teaches that "This sacrament of Penance is for those who have fallen after Baptism necessary unto salvation, as Baptism itself is for those who have not as yet been regenerated." This sacrament, then, like Baptism, is a necessary means for salvation for all who have committed grave sin after Baptism. There is, consequently, for all such a divine precept which obliges them to go to confession. They must fulfil this precept at any rate before death, and the Church, using the power given her by her divine Founder, has obliged all who are conscious of being in mortal sin to go to confession at least once a year. If there is no opportunity of going to confession, one who has fallen into grievous sin can through the mercy of God obtain pardon for it by making an act of perfect contrition or of pure love of God. These acts implicitly

[1] Sess. xiv, c. 2.

contain a desire to receive the sacrament of Penance and to fulfil all other obligations imposed by God and by lawful authority. Even after sin has been forgiven by an act of perfect contrition or of pure love of God, there will always remain the obligation of confessing it, if it be mortal, when the time for the annual confession arrives or the opportunity occurs. Those who do not fall into grievous sin are under no obligation of going to confession, though, of course, they are the last to neglect the use of so powerful a means as frequent confession to attain purity of soul and to obtain great graces from God.

## CHAPTER II

### THE MATTER OF PENANCE

1. The remote matter of the sacrament of Penance is the sins which have been committed after Baptism, for sins committed before Baptism, when this is received in adult age, are forgiven by Baptism. The matter of Penance is necessary, or free but sufficient. Mortal sins which have never been directly absolved are the necessary matter of confession, for as the Council of Trent teaches [1] every mortal sin committed after Baptism must be submitted to the keys. The same council teaches that venial sins may be confessed, but that there is no necessity to do so, and so they are sufficient but free or optional matter of the sacrament. The same is true also of mortal sins which have been already absolved directly, for the penitent may with fruit renew his sorrow for them, and nothing prevents the sentence of absolution being repeatedly pronounced over them. The previous sentence of absolution is, as it were, confirmed anew, and thereby fresh grace is infused into the soul.

2. A doubt may sometimes arise as to whether a person has ever been baptized, or as to whether his Baptism was valid, and after Baptism has been conditionally administered in such a case so as to make so important a matter secure

[1] Sess. xiv, c. 5.

the question remains whether this person must make a general confession of past sins or not. If a Catholic has been in the habit of going to confession and making good ones as far as he knows, there will be no necessity to repeat those confessions after conditional Baptism. For if he was baptized before, his confessions would be valid, and if he was not baptized, his past sins are not matter for confession.

A non-Catholic, however, who receives conditional Baptism is in a different position. His past sins have not been confessed; if he was baptized before, he is bound to confess them; if he was not baptized before, they are not matter for the sacrament of Penance. What is he bound to do when the fact of Baptism is uncertain, and at most it can be said that there are probabilities on either side?

The first Synod of Westminster[1] prescribes that a non-Catholic already probably baptized who is received into the Catholic Church must, after conditional Baptism, make a full confession of the sins of his past life. This decree was confirmed by the Holy Office December 17, 1868, and several other decrees and instructions in the same sense have been issued. In practice, then, and in countries which are bound by these decrees and instructions, as are England and the United States, the question is settled by positive law. With regard to other countries which are not directly subject to the foregoing decrees and instructions it is still a matter of controversy among divines whether a full confession is obligatory. In the opinion of several, there is no universal law, divine or human, which makes confession obligatory in such a case.

3. The proximate matter of Penance, according to the more common opinion, are the acts of the penitent: con-

[1] d. xvi, n. 8.

trition, confession, and satisfaction. According to the Thomist doctrine, the acts of the penitent constitute the material part of the sacrament, so that they are the matter out of which the sacrament is made, and are an essential part of the sacramental sign. If the Council of Trent calls them the quasi-matter,[1] it is not because they are not the true matter in the sense just explained, but because they are not the matter which is used externally in the confection of the sacrament, as is water in Baptism, or chrism in Confirmation.

On the other hand, the Scotists allow, indeed, that contrition, confession, and satisfaction on the part of the penitent, are necessary conditions for the administration of Penance, but they hold that the whole sacramental sign is contained in the words of absolution. These words alone are used by the minister of the sacrament, and they signify the grace conferred by the sacrament. Taken materially, they constitute its matter; inasmuch as they signify the giving of grace for the remission of sins, they constitute its form. This opinion has never been condemned by the Church, and it remains probable, but the question belongs rather to dogmatic than to moral theology.

4. It is not sufficient to confess one's sins in general terms, and if they are grievous the law of God requires that they be confessed according to number and species, as the Council of Trent teaches.[2] As we have seen, venial sins are sufficient matter for absolution, but there is no necessity to confess them. But supposing that a penitent has only venial sins, and he wishes to confess them, what kind of confession is necessary and sufficient? Will it be enough to say, "I accuse myself of some small sins and ask

[1] Sess. xiv, c. 3. [2] Sess. xiv, c. 5.

for absolution"; or "I accuse myself of all the sins of my past life, and I have nothing serious"?

All divines agree that it will be sufficient to mention some one sin in particular in this case, or to mention the virtue or obligation which has been violated, as by saying, "I accuse myself of slight negligence in prayer," or "of small faults against charity." They differ about the lawfulness of using a mere general formula. Such a method of confessing is against the practice of the Church, which, as St. Thomas says, we should always follow; it is also liable to abuse, for penitents can not always decide what is serious and necessary matter for confession or not, and shame might easily lead them to be content with generalities when they should give particulars. However, there is something to be said for the other view, inasmuch as some sort of confession is all that is required for the essence of the sacrament, and when there are only venial sins to be confessed there is no certain law which prescribes confession according to number and species, or even more than in general terms. This opinion is at any rate sometimes of use, as it may at times enable confessors to be satisfied with generalities when they can not get more.

5. The solution of questions about the obligation of confessing doubtful sins largely depends on what system of moral theology is followed. The following principles are generally approved by probabilists:

*a.* When the penitent doubts whether he has been guilty of some sinful act or not, he is not bound to confess it, for he can not be said to be conscious of sin, and a certain obligation can not arise from an uncertain source.

*b.* When the doubt is as to whether full consent was given to what would have been a grave sin if that were the

case, the question should be settled by recourse to presumptions. If in other cases consent has usually been given, the presumption is against the penitent, and he should confess the sin as it is in his conscience; otherwise there will be no obligation to do so.

*c.* If the doubt is whether the sin were mortal or venial, there is no obligation to confess it, for the penitent is not conscious of mortal sin; and only such are bound to confess.

*d.* If the doubt is whether a mortal sin which was certainly committed has ever been confessed, we must distinguish; if there be no good ground for thinking that it has been confessed, the obligation will still remain; if, on the contrary, there be good ground for thinking that the sin has been confessed, there will be no obligation of confessing it again.

*e.* It is generally better for penitents, unless they are scrupulous, to confess doubtful sins, as it conduces to peace of conscience, and is a meritorious act of humility.

When a doubtful sin has once been confessed as such there will be no obligation to confess it again, even though subsequently the penitent becomes sure that he committed the sin. The sin was confessed as it was on the penitent's conscience, and it was absolved directly.

According to the common opinion, although there is no strict obligation to confess a mortal sin which is doubtful, or which has probably been confessed, yet one should not go to holy communion in such a state of doubt without either going to confession and confessing at least some sin, or making an act of contrition. For a man should prove himself before receiving holy communion, and have a well-grounded belief that he is in a state of grace.

If a penitent mentions only doubtful matter for absolution, the confessor should secure certain matter before giving absolution. Although a penitent may confess only optional matter, yet he has a right to absolution founded on the tacit contract which the confessor entered into with him when he admitted him to confession.

## CHAPTER III

### CONTRITION

CONTRITION is the first of the acts of the penitent which constitute the matter of the sacrament of Penance. It is defined by the Council of Trent to be a heartfelt sorrow and detestation of sin committed, with a purpose of not sinning again. In this section, we will treat of contrition apart from the purpose of amendment, and in the following section, of the purpose of amendment.

### SECTION I

#### *The Nature of Contrition*

1. A heartfelt sorrow is not quite the same thing as a hatred or detestation of sin. Sorrow is a pain which we feel on account of the presence of some evil or the absence of some good; hatred is an aversion for some evil which is past. Hatred of sin, consequent aversion for it, and a turning away from it is the chief element in contrition; for if we have this hatred we shall have sorrow for sin regarded as a present evil, we shall turn away from it as a past evil, and we shall propose to flee from it in the future. If, then, we have this hatred of sin, we shall have sorrow and a purpose of amendment; we shall have true contrition.

That sorrow for sin which arises from the perfect love of

God is called contrition in the full and strict sense; sorrow for sin arising from less perfect motives, as from the fear of hell or the moral turpitude of vice, is called attrition. Ordinarily the word contrition is used indifferently of both kinds of sorrow.

2. Contrition or penitence or repentance is, as we have already seen, according to the teaching of the Council of Trent, a necessary condition for the forgiveness of sin by God. God will not forgive sin unless the sinner turn from his sin and approach Him by sorrow of heart. Contrition, then, is a necessary means of salvation for all who have fallen into grievous sin. It is also matter of divine precept which must be fulfilled at least when the sinner is in danger of death, for then it becomes of supreme necessity, and also sometimes during life. The Church has determined this divine precept by commanding all who have come to the use of reason and have fallen into sin to go to confession at least once a year. Moreover, repentance for sin becomes necessary when any action has to be performed which for its due performance requires the agent to be in the state of grace. Furthermore, inasmuch as one who is deprived by sin of the grace of God can not long resist temptation and will fall again and again before long, the sinner is obliged to rise from his sin in order to avoid repeated falls. Of course it is better, and the sinner is to be urged, by all means, to rise at once when he has had the misfortune to fall into sin. He should never sleep while he is conscious of being out of the friendship of God. Still he is not bound under pain of committing a new sin to repent immediately after committing sin. It will be sufficient if he repent at least when repentance becomes necessary according to the doctrine which has just been laid down.

3. Not every sort of sorrow is sufficient to justify the sinner, even with the help of the sacrament of Penance. Although perfect love of God suffices to reconcile the sinner with God, though it leaves the obligation of confessing the sin it remits, still this love will not serve by itself as a preparation and disposition for the reception of Penance. A material part of the sacrament of Penance is contrition, and contrition is not love. The sinner, then, who wishes to receive the sacrament of Penance must have true and sincere sorrow for his sin; he must detest it and turn away from it in order to be reconciled with God, whom it offends. Mere natural sorrow for sin because of the temporal evils which it causes is not sufficient. I may well be sorry because sin has ruined my good name, or my health, or my fortunes, but such motives are merely natural, and have no relation to God. The sinner in the sacrament of Penance seeks reconciliation with God, and so the motives of his sorrow must have reference to God; they must be supernatural, founded on revelation and on faith. Without faith no act can be of avail for salvation, as "without faith it is impossible to please God." [1] The sinner must regard sin as the greatest of all evils, as in reality it is. He must be prepared to do and to suffer anything rather than commit sin again. Otherwise he can not be said to fulfil that greatest of all the commandments, which bids us love God with our whole heart, with our whole soul, with all our strength, and with all our mind. Inasmuch as any one mortal sin deprives us of the friendship of God, the sorrow of the sinner must also be universal and embrace all the sins by which he has grievously offended Almighty God. For this it is not necessary that there should be a separate

[1] Heb. xi. 6.

and distinct act of sorrow for every sin committed; it will be sufficient if the motive be universal, so as to embrace all sins. Thus, inasmuch as all mortal sins are directly opposed to charity, and any such sin deserves the punishment of hell, if our sorrow is motived by love toward God, or by fear of hell, it will be universal in the sense required.

Provided that there be sorrow for all mortal sins confessed, a want of sorrow for venial sins will not invalidate the sacrament. For venial sins are compatible with the state of grace and the friendship of God. Still there must be some sorrow for sin confessed; otherwise an essential part of the sacrament of Penance will be wanting. And so if the penitent have only venial sins to confess, for none of which he is sorry, the sacrament would be invalid and sacrilegious. He must at least be sorry for one sin confessed, and he should not confess venial sins for which he is not sorry unless he has some good reason, as if he wishes to ask the advice of his confessor about them, or to make the state of his soul more fully known to him.

4. As contrition according to the common view forms a part of the sacramental sign in Penance, it should in some manner be expressed outwardly, not indeed that any form of words is necessary, but the sorrow of the penitent should appear from his confession, from his demeanor, or from his words or other signs. It must exist, if not before, at least when absolution is given, for sin cannot be forgiven if there be no sorrow for it. Moreover, as the different parts of the sacrament go to make one moral whole, the penitent's act of sorrow should in some way be referred to the sacrament. For this, however, it will be sufficient if together with the act of sorrow there be the intention to confess the sin. In case, then, a penitent has inadvertently

omitted a serious sin from his confession, but remembers it immediately after he has received absolution and mentions it to the confessor, the latter may absolve him at once, nor is it necessary for the penitent to make a fresh act of sorrow for that particular sin.

On account of the necessity of a moral union between the several parts of the sacrament, there must not be too long an interval between the act of sorrow for sin and the reception of absolution for it. Ordinarily, of course, the sorrow is virtually renewed and expressed when the sin is confessed, but if this were not the case, and the act of sorrow preceded the confession by more than one or two days, it would be doubtful whether there was the necessary union between the parts of the sacrament so as to constitute one sacramental sign.

5. There have been heated controversies in the past as to the sufficiency of attrition to remit sin with the sacrament of Penance. Although they are not quite settled even yet, nevertheless since the Council of Trent the common doctrine is fairly clear and certain. The Council then seems to teach [1] that sorrow for sin because of the fear of hell, or its moral turpitude, or on account of the punishment with which God afflicts the sinner even in this life, will be sufficient for the remission of sin in the sacrament of Penance, provided that it destroys all affection for sin in the heart of the penitent, and converts him from sin to God. The slavish fear of hell, by which a man refrains from sinful acts while preserving his affection for them, is, of course, insufficient even with the help of the sacrament to forgive sin and reconcile the sinner with God. The fear which is salutary and efficacious must be the filial fear by which the

[1] Sess. xiv, c. 4.

sinner turns to God because he neither wants sin nor its evil consequences any more. Such sorrow has all the elements which, as we saw above, are required in contrition.

6. There is a controversy among theologians as to whether the sacrament of Penance can ever be valid without producing its effects in the soul at the time of its reception on account of some obstacle which is there. We saw above that this may be the case with Baptism and other sacraments. There is a special difficulty with regard to Penance, because the dispositions, whose absence is only an obstacle to grace given by other sacraments, enter into the substance of Penance, and so their absence would seem to destroy the sacrament itself. In spite of this, however, it is a probable opinion that at any rate in two cases the sacrament of Penance may be valid but *unformed*, as theologians say. The first case is when a penitent has forgotten some mortal sin for which he has never elicited an act of sorrow, but confesses other sins for which he is sorry for motives which are special to them and not universal. The second is when through inculpable ignorance the penitent thinks that it is not necessary to be sorry for all mortal sins confessed, provided there be the requisite sorrow for some. In these cases there will be all the elements necessary for the validity of the sacrament, which, however, can not infuse grace into the soul on account of the presence there of grievous sin still unrepented of.

7. When Penance is received in danger of death with attrition and not contrition, some theologians insist on the necessity of the dying person making an act of perfect love of God, either to make sure before death of the validity of the sacrament of Penance, or to satisfy the divine precept, which according to them requires all who are in

danger of death to make an act of charity. However, when the dying person has made a good confession and been absolved even with attrition, he is certainly in the state of grace, nor is there any valid argument which proves that such a person is obliged to make an act of charity. Neither the dying nor those who assist them are as a rule conscious of any such obligation.

Because the Council of Trent, while describing the process of the sinner's justification, mentions acts of faith, hope, and the beginnings of love toward God, some theologians concluded that explicit acts of those virtues are required for Penance in addition to contrition. Those acts, however, are implicitly contained in the other acts of the penitent, and the fact that the Council explicitly mentions them does not prove that it teaches that they must be explicitly elicited by the penitent sinner in order to receive absolution for his sins.

## Section II

### *The Purpose of Amendment*

1. We saw in the preceding section that contrition is essentially a turning away with hatred from sin in order to approach to God, and so all true contrition necessarily implies a purpose not to sin again. If the truly contrite sinner thinks of the future, he can scarcely fail to form an explicit purpose of amendment, and some theologians hold that this explicit purpose is necessary, otherwise why should it find a place in the definition of contrition given by the Council of Trent? On account of its importance, it is well that the purpose of amendment should always be explicit, but still as it is virtually contained in all true sorrow for sin, and the fact that the Council explicitly mentions it does not prove that it must necessarily be explicit, the opinion which denies the absolute necessity of an explicit purpose of amendment for the validity of Penance is safe. A Roman council held in 1725 under Benedict XIII issued an instruction explaining how to make one's confession, and it only insists on an implicit purpose of amendment.

2. Whether it be explicit or implicit, the purpose of amendment must be sincere, efficacious, and universal.

It must be sincere, with a genuine intention to avoid sin in the future; it will not suffice to make profession of good intentions with the lips, without any real determination to carry them into effect.

It must be efficacious, or the sinner must be prepared to take the necessary means to avoid sin. A mere half wish

and half resolve will not do. The sinner must be prepared to do and suffer anything rather than fall into sin again. It would, indeed, be unwise to try one's own determination by imagining all kinds of terrible temptations to sin to see if the will would remain constant, but at any rate the will must here and now be so rooted in good that, come what may, it is determined not to be moved.

There must also be a firm resolve to avoid all mortal sins for the future, not merely any that may have been confessed, but all others, or else there can be no friendship with God, whom we must love above all things. He can not love God above all things who is prepared to offend Him mortally. The purpose of amendment need not extend to all venial sins, provided that at least there is the sincere intention of avoiding some sin that is confessed, or at any rate of lessening the number of smaller transgressions.

## CHAPTER IV

### CONFESSION

1. Confession, or the self-accusation of a penitent made to a priest with a view of obtaining sacramental absolution, is the second material element of Penance. Such confession is necessary because it is an essential element of the sacrament of Penance, which, as we have seen, is a necessary means of salvation for all who have fallen into grave sin after Baptism. The Council of Trent teaches that "From the institution of the sacrament of Penance, as already explained, the universal Church has always understood that the entire confession of sins was also instituted by the Lord, and is of divine law necessary for all who have fallen after Baptism." [1]

2. This confession must be made by word of mouth according to the practice of the Church and the teaching of the Council of Florence.[2] However, oral confession is not absolutely necessary for the validity of the sacrament, for mutes or penitents who know no language known also to the confessor, or those who are dying and are unable to speak, may confess by signs. Moreover, for good reason, any one may write his confession, hand it to the priest to read, and accuse himself in general terms, such as "I confess all that is written there." Although mutes and other penitents may thus confess in writing, yet there is no

[1] Sess. xiv, c. 5. [2] Decreto pro Armenis.

obligation to do so, for sacramental confession should be secret and auricular, whereas writing makes it to some extent public, *litera scripta manet.*

Clement VIII, by a decree dated June 20, 1602, condemned the opinion that it is lawful to confess by letter to an absent priest or to receive absolution in the same way from an absent priest, and forbade the opinion ever to be put in practice; whence theologians conclude that such confession or absolution would be invalid by divine law, else the Pope could not have condemned it in such absolute terms. It seems to follow that confession by telephone would also be invalid, for confession would be made by one who is absent, not present with the priest at the time of receiving this sacrament, as is required by the conditions of its valid administration.

3. A full, entire, and specific confession of all the mortal sins which have been committed after Baptism is prescribed by divine law. According to the Council of Trent,[1] "If any one saith that in the sacrament of Penance it is not necessary by divine law for the remission of sins to confess all and singular the mortal sins which after due and diligent previous meditation are remembered, even those mortal sins which are secret, and those which are opposed to the two last commandments of the Decalogue, as also the circumstances which change the species of a sin . . . let him be anathema."

Theologians distinguish between the material and the formal integrity of confession. The material integrity consists in making known each and all the mortal sins which have been committed and which have not yet been confessed; the formal integrity consists in confessing all

[1] Sess. xiv, c. 7.

the mortal sins which occur to the mind after a diligent examination of conscience, or at least of all the sins which the penitent is bound under the circumstances to confess to the priest. It is formal integrity which is prescribed by divine law, and to procure it the penitent is bound before confession to make a diligent examination of his conscience. He should not be too anxious in making this examination; it will be sufficient if he employ that diligence which prudent men employ in worldly matters of importance. No general rule can be given to measure the length of time which the examination should occupy. Much depends upon the character of the individual, the length of time which has elapsed since the last confession, whether the penitent is accustomed to commit grave sins or not, and on similar circumstances. If the penitent can not recollect the number of times that he has fallen into serious sin, he should mention the number as nearly as he can, and if he has fallen very frequently and almost continuously over a long period of time, it will be sufficient to mention the approximate number of times that he has fallen in the day or week, together with the length of time during which the habit has lasted.

4. A number of special questions must here be considered which touch on the integrity which is required in confession.

The Council of Trent, as we have just seen, teaches that those circumstances which change the nature of a sin must be made known; the theft of a consecrated chalice, which is a sacrilege, would not be adequately confessed by simply saying, "I committed theft." Not only circumstances which change the specific nature of a sin must be confessed, but also those which make a venial sin mortal and *vice*

*versa.* The quantity in theft, then, must be indicated sufficiently to enable the priest to judge whether it was a mortal or a venial sin. Divines are not agreed whether circumstances which merely increase the malice of a sin but do not otherwise change its nature or moral quality are necessarily to be confessed. Many, with the Catechism of the Council of Trent, teach that there is an obligation to confess them, but as they give no convincing reason for their opinion and the contrary is held by many approved theologians, we may safely follow the more easy and the more lenient view.

It is not sufficient to confess as an internal sin one which was completed in external act. It would not be sufficient for a penitent to say that he desired to steal when he actually stole. For although the malice of sin is in the internal act of the will, and the external act adds nothing to it *per se*, yet, considered as human actions, an internal is different from an external act, and therefore as sins are bad human actions, an internal sin is specifically different from the same sin completed in external act.

It is a matter of controversy whether the mere effect of a sin must be confessed. If a man wounds another with the intention of killing him, and then repents and confesses unlawful wounding with the intention of killing, but afterward the man dies, will his assailant be obliged to go to confession again and confess homicide? The opinion is more probable that there is no such obligation, for such an effect of sin is not a sin, and we are only bound to confess sins; a sin is a human action, and when the victim dies his assailant does not act; he would now prevent the death if he could, and so he does not sin.

A vicious habit or custom of committing sin is a cause

of sin rather than sin itself, and as sins are the matter of confession, *per se* it is not necessary to confess a sinful habit. If, however, the penitent did not use sufficient diligence to correct his bad habit, and this caused him inadvertently to commit sin, to blaspheme, for instance, then although the blasphemy, because inadvertent, is not sinful in itself, it is nevertheless voluntary and sinful in its cause, and so the uncorrected bad habit must be confessed. It is sometimes of importance for the confessor to know whether his penitent has contracted a habit of sin in order to be able to direct him, and so the confessor has a right to ask in confession whether a habit has been contracted, and the penitent is then under an obligation to tell the truth.

If many sins have been committed with others it is usually immaterial whether they were committed with one and the same or with different persons. However, if a sin against chastity is committed with a married person, that circumstance must be mentioned, as it causes the sin to be against justice as well as against chastity. Similarly, if one or both accomplices in such a sin are bound by a vow of chastity, that must be mentioned. A Religious who is a priest, and even if he is solemnly professed, would satisfy his obligation of confessing a sin against chastity by mentioning it, and adding that he is under a vow of chastity. For it is probable that there is no specific difference between the violation of a solemn and a simple and even private vow of chastity, and a priest like a Religious is bound to chastity by vow.

Sins against chastity committed with relations have the special malice of incest, but with the exception of the first degree in the direct line of consanguinity, it is probable

that the several degrees of kindred or affinity do not constitute a specific difference in the sin. There is a special malice and difformity in a sin of impurity committed with parent or child, but among civilized peoples this is happily of rare occurrence. Hatred against relations is not only against general charity but is also contrary to piety, which binds relations to love each other with a special affection. Grave hatred will be a serious sin also against this virtue of piety if it is indulged in against near relations, not if it is against more remote kindred with regard to whom the obligation is not so strict.

Mere superiority or position of itself does not change the nature of a sin committed by rulers, magistrates, and people in authority. And so if a master sin with his servant, the sin does not of itself differ from ordinary fornication. If, however, the sin is also a violation of a special duty, then of course it will have a special malice, and so if a schoolmaster corrupt a youth committed to his care, he must mention this circumstance in confession.

The time at which a sin was committed does not change its nature, and so even though a sin which has been committed recently be confessed as though it were a sin of one's past life, the confession will be valid, but of course the practice is not to be commended, nor should it be indulged in.

5. Integrity of confession is prescribed by divine law, but as even divine law does not bind to what is impossible, physical or moral impossibility of making a full confession will excuse the penitent from obeying the law. And so danger of death when the dying person has not the strength or time for making a full confession, or ignorance of any language known to the priest, or danger of violation of the

seal of confession, or danger to life from pestilence or other cause, will excuse the penitent from making a full confession of all his sins. Innocent XI condemned the proposition that a large concourse of penitents on some great feast is a sufficient reason for absolving them without requiring a full confession. When a penitent has been absolved without making a full confession on account of the physical or moral impossibility of doing so, there always remains the obligation of supplying the defect in the next confession, unless the impossibility continues. A proposition asserting the contrary was condemned by Alexander VII. Moreover, that a penitent may lawfully ask for absolution without making a full confession, the following conditions must be verified:

*a.* There must be some sort of necessity for making the confession here and now, as for instance the obligation of receiving the sacraments at Easter, or the hardship of remaining long without the sacraments, or in a state of mortal sin.

*b.* There must be no other confessor at hand to whom a full confession could be made without grave inconvenience.

*c.* All sins must be confessed which can be mentioned without grave inconvenience, extrinsic to confession, which affects the penitent, the confessor, or some third person. The reason of this is because it can not be supposed that Christ our Lord intended to bind penitents to make a full confession when it would entail such a hardship, whereas we know that He did command a full confession in spite of shame or other difficulties which are the natural accompaniments of confession of sin to a fellowman.

6. By a general confession is meant a repetition of preceding confessions. Sometimes this is necessary, some-

times it is useful; otherwise it is harmful, likely to beget scruples, and lead the penitent to think about the past when he should be thinking about the present and the future, and so it should not be permitted.

A general confession is necessary when through want of jurisdiction on the part of the confessor, or of a full confession or of sorrow for sin on the part of the penitent, former confessions were certainly invalid. In these cases all the invalid confessions must be repeated at least as far as the necessary matter is concerned.

A general confession at certain times extending over a certain period is frequently prescribed to Religious by rule, which, of course, should be dutifully observed. Moreover, it is useful for most people to make a general confession sometimes, especially when about to enter upon a new state of life, or when while making a spiritual retreat and meditating upon sin the grace of God moves the soul to greater sorrow for the past than one ordinarily feels. Sometimes a general confession may be allowed to allay doubts and scruples of conscience with regard to past sins.

Unless some notable spiritual fruit is to be hoped for, a general confession should in other cases besides the above be regarded as harmful, and should not be allowed.

## CHAPTER V

### SATISFACTION

1. It is part of the law of eternal justice that when we sin by following our own will instead of the will of God we must be brought back again into the right way by suffering what we would not. And so, sin brings with it its penalty; when we have sinned we must suffer for it either in this world or the next. It is in keeping with this principle that by the institution of Christ one of the elements of the sacrament of Penance by which sin is forgiven is satisfaction. By satisfaction is understood some action which entails labor and pain, imposed by the priest in confession on the repentant sinner and accepted by him. We have already seen that the Council of Trent teaches that satisfaction is an element in the material part of Penance, and the same council in another place[1] adds: "Therefore the priests of the Lord ought, as far as the Spirit and prudence shall suggest, to enjoin salutary and suitable satisfactions according to the quality of the crimes and the ability of the penitent."

Confessors, then, are under the obligation of giving a penance to their penitents in satisfaction for the sins which they confess. As a general rule, they must give a grave penance for grave sins, otherwise they will sin grievously; but probably only a venial sin would be com-

[1] Sess. xiv, c. 8.

mitted by neglecting to give a suitable penance for light faults.

In the early Church the penances enjoined were very severe, but according to modern discipline that is considered a grave penance and suitable for a penitent who has confessed grave sins, which would bind under a grave obligation if it were imposed by ecclesiastical law. The Church encourages her children to make up by gaining indulgences for what the justice of God may require in addition to the comparatively light penances which are imposed nowadays.

The natural sequence of judicial acts in the tribunal of Penance requires that a penance should be enjoined by the priest before giving absolution, but it will be valid if imposed after absolution.

The Ritual expresses a wish that, as far as possible, penances should be given which are contrary to the sins confessed, as almsgiving for avarice, fasting or other bodily affliction for lust, humiliations for pride, acts of devotion for sloth. For such as but seldom confess more frequent reception of the sacraments may be enjoined. The confessor should never apply to personal objects alms imposed on his penitents, nor enjoin public penance for secret sins.

2. The penitent is bound to accept and to execute a reasonable penance which his confessor has imposed on him. This obligation will be grave when a grave penance has been imposed for serious sins, otherwise it will bind under pain of venial sin. As the penitent is bound to accept the penance, so he is obliged to execute it at the time prescribed, if any time was fixed, or if not, then at a reasonable time. To defer its execution so long as to be in danger of forgetting it would be equivalent to not ful-

filling it. It is best to execute the penance as soon as can conveniently be done.

If the penitent forgets the penance which was enjoined, he is excused from fulfilling any penance, as he is not bound to confess the same sins a second time, and he can not substitute some other of his own choice, as he is not the minister of the sacrament.

3. In order to be sure of obtaining the sacramental effect of fulfilling the penance enjoined by the confessor, the penitent must be in the state of grace when he fulfils it, for God does not remit temporal punishment due to past sins in favor of one who is at enmity with Him. However, by fulfilling the penance even in the state of mortal sin, what had been enjoined would have been executed, though it would not then effect its object of remitting temporal punishment due to sin confessed. It is a disputed point among theologians whether fulfilment of penance while in a state of sin would produce its effect when the sinner repented and again recovered the state of grace. Many theologians hold that it does so, and that it revives in the same way as a sacrament revives which has been validly received, but which does not produce grace at the time of its reception on account of the presence of some obstacle in the soul.

Although it is better and safer to execute the penance while in the state of grace, and if it is executed in a state of mortal sin it does not at any rate at once obtain its effect, yet it is not certain that any fault is committed by doing one's penance while in sin, any more than it is sinful to assist at Mass while out of the friendship of God. One who in sin hears Mass on Sunday satisfies the precept, though he does not obtain the full fruit of the sacrifice;

in the same way one, who while in sin says his penance, fulfils indeed his obligation, but does not thereby obtain at the time the sacramental fruit of his action.

4. Although a penitent may not of his own authority substitute another penance for that which was imposed by his confessor, yet he may for good reason get this commuted either by the same or by a different confessor. The same confessor may commute the penance which he himself imposed either in or out of confession, provided that so long an interval has not elapsed that the commutation can not be considered one moral act with the confession and the imposition of the penance which is commuted. If the penitent goes to another confessor and asks for a commutation of a penance which has been enjoined him, the commutation must be granted in confession, otherwise the new confessor will have no jurisdiction over the penitent. The former confession need not be repeated; it is probable that it will be sufficient if the new confessor knows the penance which was given and for which a commutation is asked, together with the difficulty which the penitent feels in executing it.

## CHAPTER VI

### THE FORM OF PENANCE

1. We must distinguish the form which is required for the validity of the sacrament from the form which is commonly used according to the Ritual. "I absolve thee from thy sins," is sufficient for the validity of the sacrament, and probably even the mere words, "I absolve thee." The Ritual form consists of the four short prayers beginning with *Misereatur*, etc., of which the third is the most important, as it contains the absolution from censures and from sin. The absolution from censures is always given before the absolution from sin for the sake of greater security, because if the penitent were under censure, he could not lawfully receive a sacrament. A rubric of the Ritual expressly lays down that the other three prayers may be omitted in shorter and more frequent confessions, but it is better always to add the last prayer, as it probably gives a special satisfactory efficacy to the good works which the penitent subsequently performs.

We saw above that absolution can not be given validly by a priest to a penitent who is not morally present at the time. This sacrament is a judicial process and the priest who is the judge pronounces sentence on the culprit who is present in court. The absolution must be pronounced by word of mouth, and the penitent must be within hearing distance, not farther distant than the ordinary tone of voice carries.

2. The priest can not pass sentence without having a sufficient knowledge of the sins to be absolved and the dispositions of the penitent. It is not necessary, however, nor is it possible to have a distinct knowledge of the subjective malice with which the sins of the penitent were committed. The confessor may presume that the subjective malice of the penitent corresponds with the objective malice of the sin, unless he has special reasons for concluding otherwise. With his habitual knowledge of the malice of different sins the confessor passes a sufficient judgment on them if he quietly listens to the self-accusation of the penitent.

A merely historical account of the sins which a person has committed may suffice for absolution if the penitent resumes them under some brief formula by which he expresses his desire to confess them and receive absolution for them. The priest must in this case of course retain at least a general and vague knowledge of the sins which he absolves.

3. A dying person, who through weakness or other causes is unable to make a full confession, may be absolved absolutely if he mentions what sins he can, or even if he asks for the absolution of his sins, for such a confession is formally integral.

The Ritual prescribes that a dying person who has lost the use of his senses is to be absolved even if he previously only expressed a desire himself or through others to receive absolution. In this case, also, it would seem that the absolution should be absolute.

Dying persons who have lost the use of their senses may be absolved conditionally even if they give no certain signs of a desire to confess or of sorrow for their sins. It may

be that in such a state the dying person has the requisite dispositions and is trying his best to give expression to them, and so the movements of the body or his labored breathing may be indications of a wish to receive absolution. At any rate in such a case of necessity we may use even a slenderly probable opinion, and it is now the common practice to absolve conditionally in such cases.

## CHAPTER VII

### THE APPROBATION OF THE MINISTER OF PENANCE

1. No one but a priest can administer the sacrament of Penance. The Council of Trent passed the following decree: "If any one saith . . . that not priests alone are the ministers of absolution but that to all and to each of the faithful of Christ is it said: 'Whatsoever you shall bind upon earth shall be bound also in heaven, and whatsoever you shall loose upon earth shall be loosed also in heaven'; and 'whose sins you shall forgive they are forgiven them, and whose sins you shall retain they are retained'; by virtue of which words every one is able to absolve from sins, to wit, from public sins by reproof only, provided he who is reproved yield thereto, and from secret sins by a voluntary confession; let him be anathema." [1]

Not every priest, however, can hear confessions; besides the power of Orders he must have the power of jurisdiction; and except in certain cases before receiving jurisdiction he must by a decree of the Council of Trent have received episcopal approbation. It is about this approbation that we have to treat here.

The decree of the Council of Trent is as follows: "Although priests receive in their ordination the power of absolving from sins, nevertheless the Holy Synod ordains that no one, even though he be a regular, is able to hear the confessions of seculars, not even of priests, and that he

[1] Sess. xiv, c. 10.

is not to be reputed fit thereunto, unless he either holds a parochial benefice, or is by the bishops after an examination, if they shall think it necessary, or in some other manner, judged capable; and has obtained their approval, which shall be granted gratuitously; any privileges and customs to the contrary notwithstanding, though they be immemorial." [1]

The approbation of the bishop then is necessary by ecclesiastical law to enable a priest to hear the confessions of seculars, even of priests, validly, unless the priest hold a parochial benefice, for then he can hear the confessions of his parishioners without approbation. Nor is any approbation required to hear the confessions of regulars with solemn vows. We may define this approbation as the juridical judgment of the bishop that a priest is fit to hear confessions. It testifies to the priest's fitness and makes him capable of receiving jurisdiction. The required fitness consists in having the necessary knowledge, prudence, and virtue, and the bishop may satisfy himself on these points by subjecting the candidate, whether he be a secular or a regular, to an examination. The bishop whose approbation is required is the ordinary of the place where the confession is heard, and he may or may not be also the ordinary of the priest or of the penitent. This is now a settled point of ecclesiastical law, though for some time subsequent to the Council of Trent it was a matter much canvassed among divines.

There was also a controversy as to whether approbation was necessary in order to absolve from venial sins or mortal sins that have been already confessed, but Innocent XI forbade bishops to allow priests to absolve even such sins

[1] Sess. xxiii, c. 15, de ref.

without their approbation, and since this decree it has been unlawful to do so, if not invalid, as the more common opinion holds. The bishop may grant approbation himself or through his vicar-general. While the See is vacant, the vicar-capitular grants approbation.

It is not sufficient for the confessor to presume that the bishop will grant him approbation; he must have received it before exercising his functions, for it is a condition precedent for the valid exercise of delegated jurisdiction.

2. The bishop may, and ordinarily does, limit the approbation which he grants to a fixed time, to a certain place, and to certain classes of penitents. In England the faculties of the younger clergy are usually granted from synod to synod, at which time the approbation previously granted will lapse unless renewed. The approbation is usually valid for the whole diocese, but nothing prevents it being limited to a particular district. Nuns and females living in convents are commonly excepted from general approbation unless when they are lawfully outside the convent; in order to hear their confessions validly within the convent special approbation is required.

NOTE. — It can not be said that the practice which exists in England prevails also in the United States. While in this country nuns are frequently excepted from general approbation, it is rare to except other females living in convents. Thus priests having ordinary faculties can in most dioceses hear the confessions of children in a boarding-school in charge of Sisters, as also the confessions of other females in the convent, provided these are not Religious, *i.e.*, by their vows, or by being aspirants, as novices or postulants. — END OF NOTE.

3. For good cause the bishop may recall the approbation which he has once granted, and as he is the judge whether there be a good cause or not, practically a priest can not validly hear confessions when the bishop has revoked his approbation, even though the priest maintain that there is no just cause for doing so. Of course a bishop would act unjustly in recalling a priest's approbation and thus placing him under suspicion, unless he had sufficient and certain ground to go upon.

## CHAPTER VIII

### THE JURISDICTION OF THE MINISTER OF PENANCE

1. Priests are judges in the tribunal of Penance, and judges must have jurisdiction if their sentence is to take effect. As the Council of Trent teaches: "Wherefore, since the nature and order of a judgment require this, that sentence be passed only on those subject to that judicature, it has ever been firmly held in the Church of God, and this synod ratifies it as a thing most true, that the absolution which a priest pronounces upon one over whom he has not either an ordinary or a delegated jurisdiction ought to be of no weight whatever." [1]

Jurisdiction in general is the power of ruling subjects. We must distinguish jurisdiction in the internal forum from jurisdiction in the external forum. The latter has reference primarily and directly to the common good, to promote which it makes laws, administers justice, and directs the machinery of government. Jurisdiction in the internal forum refers directly and primarily to the good of the individual soul, whose actions it directs toward God. It is exercised either in the sacrament of Penance, when sins are forgiven, or outside the sacred tribunal, as when a dispensation is granted from ecclesiastical law. Again, jurisdiction is either ordinary or delegated. Ordinary jurisdiction is the authority which is exercised in virtue of an office which one holds and in one's own name; delegated jurisdiction is granted by one

[1] Sess. xiv, c. 7.

who has ordinary jurisdiction and is exercised in that person's name.

As a general rule, one who has delegated jurisdiction can not subdelegate it to another, but there are two exceptions to this rule. Delegated jurisdiction which is annexed to an office, like the power which bishops for many purposes have over regulars, may be subdelegated for particular cases. General delegation for a whole class of matters may also be subdelegated in part for particular cases.

From what has been said it will be clear that bishops have ordinary jurisdiction over their diocesans both in the external and in the internal forum. A parish priest has ordinary jurisdiction in the internal forum alone. Missioners with the cure of souls in England and in the United States exercise their functions in the name of the bishop of the diocese, and have only delegated jurisdiction in the internal forum. Simple confessors also have delegated jurisdiction.

Ordinary jurisdiction ceases with the loss of the office to which it was attached, or if the holder of it fall under censure, and as being under censure is to be avoided. Delegated jurisdiction ceases after the lapse of the time for which it was granted, and when revoked by a superior. Delegated jurisdiction for a particular case ceases on the death of him who delegated it, or on his removal from office, if nothing has been done in the matter; otherwise it lasts until the matter is concluded. Delegated jurisdiction for causes in general or for hearing confessions does not cease on the death of him who granted it, or on his removal from office, if it was granted for a definite period, or until revoked, or even probably if granted during goodwill.[1]

[1] The new Code confirms this probable opinion. C.J.C., can. 61.

2. Although as a general rule absolution given by a priest who has no jurisdiction is null and void, yet there are certain cases in which the Church supplies jurisdiction so that the act may be valid. One of these cases is mentioned by the Council of Trent:[1] "Nevertheless, for fear lest any may perish on this account, it has always been very piously observed in the said Church of God, that there be no reservation at the point of death, and that therefore all priests may absolve all penitents whatsoever from every kind of sins and censures whatever."

"The point of death" is not to be understood too literally; it means the same as "danger of death," such as arises from a serious illness, a dangerous surgical operation, or an imminent battle in war.

Any one, then, who has priest's orders, even though he be a heretic or schismatic, may validly absolve any penitent who is in danger of death. Whether a priest without faculties may do this, even when there is another approved confessor present, is disputed.[2] A clause in the Ritual seems to imply that a simple priest can only give absolution if an approved confessor be not present, and this is the teaching of St. Alphonsus and of many other divines. Others, however, point out that no such limitation appears in the words of Trent, nor does the Ritual strictly impose the limitation; it only insinuates what in practice should ordinarily be done. A simple priest, then, has at least probable jurisdiction over a penitent who is in danger of death, even when an approved confessor is also at hand.

Another case where the Church supplies jurisdiction is

[1] Sess. xiv, c. 7.

[2] Any priest may validly and lawfully absolve any one in danger of death from any sins even though an approved priest be present. C.J.C., can. 882.

when a priest without faculties hears confessions and he is commonly supposed to have faculties with a colorable title. Such a title exists when the faculties were indeed granted, but invalidly on account of some secret flaw. That the Church supplies in these circumstances is certain from the law *Barbarius*,[1] and from the chapter *Infamis* in the Decretum of Gratian.[2]

Even if there be common error about the priest's faculties without colorable title, it is probable that the Church supplies, because of the authority of many theologians who teach this, and the public good seems to require it as in the former case, though there is no text of law to prove it.

Although the Church supplies jurisdiction in these cases for the good of the faithful, yet a priest who knowingly heard confessions without faculties would usurp jurisdiction and commit a grievous sin.[3]

The Church does not supply jurisdiction when there is only private error on the part of one or two.

Finally, the Church supplies jurisdiction as far as it is necessary to do so when a confessor gives absolution relying on probable jurisdiction. For it is the common practice of confessors to act on probable grounds for jurisdiction, and a custom approved by the Church is a valid source of jurisdiction. Absolution, then, given by a priest with probable jurisdiction is valid and lawful.

When the possession of jurisdiction is doubtful, or when the priest has no solid grounds for thinking that he has jurisdiction, he may not lawfully give absolution without necessity. For he would expose himself to the danger of confecting a sacrament which is null and void, to the

[1] Dig. 3, de officio prætoris. [2] c. 1, C. iii, q. 7.

[3] By the new Code, absolution granted inadvertently after a priest's faculties have expired is valid. C.J.C., can. 207, sec. 2.

spiritual detriment of the penitent. In case of necessity, however, when the penitent wishes to make his Easter duty, or to avoid his spiritual loss, the priest may absolve him conditionally with doubtful jurisdiction, warning the penitent of the doubt, and leaving him to obtain absolution that is certainly valid if he choose to do so.

3. Ordinary jurisdiction is personal and follows its possessor wherever he goes, so that a bishop or a parish priest may hear the confessions of their subjects wherever they meet them, even without the approbation of the local ordinary. On the other hand, delegated jurisdiction is restricted within the limits for which it was granted, and so a missionary priest can not hear the confessions even of his own flock when he is outside the diocese or district to which his faculties are confined.

Regulars have a special privilege by which they can lawfully hear the confessions of all who come to them in the place for which they are approved. Secular confessors have obtained the same faculty from custom, and so now strangers from other dioceses may validly and lawfully confess to any confessor, secular or regular, who has the approbation of the ordinary of the place. This is now a general custom of the Church, sanctioned by the Holy See, and therefore part of the common law of the Church. No bishop, then, has the power to forbid his subjects to go outside the diocese for confession to priests belonging to other dioceses. In doing so they use a right granted them by the Church.

4. Military chaplains may hear the confessions of the soldiers committed to their charge while they are in camp or on the march without the approbation of the ordinary in whose diocese they happen to be; but when the soldiers

are in barracks or on garrison duty, their confessors require the approbation of the bishop of the place, unless the contrary is specially set down in their faculties. By a decree of Propaganda, May 15, 1906, the Archbishop of Westminster, for the time being, is the Superior of all commissioned military and naval chaplains of the British Empire. He grants them the faculties necessary for the exercise of their office, with the exception of the chaplains in Ireland and India.[1]

By recent decrees of the Holy Office, a priest on board ship who has faculties for hearing confessions either from his own bishop, or from the bishop of the port of embarkation, or from the bishop of any other place at which the ship touches, may hear the confessions in the ship of all fellow-passengers or of any who come to him; and if there is no priest at all or only one in a place where he happens to go on shore, and the ordinary can not easily be reached, he may hear the confession of any one who asks him to do so on land, and absolve him from cases reserved to the bishop.[2]

[1] A.S.S. xl, p. 308.

[2] S.O., April 4, 1900; August 23, 1905; December 12, 1906.

## CHAPTER IX

### THE CONFESSORS OF RELIGIOUS

1. The confessors in Religious Orders which are exempt from the jurisdiction of the ordinaries, get their jurisdiction for hearing confessions from the Holy See through their Superiors. No approbation is required to hear the confessions of regulars, and so a regular confessor who is deputed by his Superior to hear confessions can hear those of his religious brethren and the novices, unless there is some special rule about these latter. By a special privilege granted by the Holy See they can also hear the confessions of those seculars who live in the monastery day and night in the service and under the obedience of the Religious. Whether they can also without the approbation of the ordinary hear the confessions of boys who are living with them for the purpose of education, is disputed among canonists and divines. Many distinguished authorities hold that the privilege of hearing those in their service may legitimately be extended to boys living under their obedience for the purpose of receiving their education, and whatever may be said for or against this contention several Orders have obtained special privileges by which their confessors need no approbation of the bishop to hear the confessions of their pupils. The regular Orders share in these privileges, which extend not merely to boarders but also to day scholars, as long as these are within the limits of the monastery.

In order to hear the confessions of other seculars a regular confessor must, as we saw above, be approved by

the bishop of the place where the confessions are heard. The bishop usually grants *faculties*, which comprise not only approbation but also jurisdiction; so that a regular who has faculties for hearing confessions from the bishop has his jurisdiction from a twofold source. Before granting faculties to a regular, the bishop may require him to stand an examination, but if after examination the regular proves himself fit the bishop is bound to grant him permanent faculties, which he can not subsequently revoke except for grave fault or just cause connected with confession.

2. Religious living in community are bound to confess to the regular confessors who are deputed by the Superior to hear them, nor can they validly confess to externs.[1] Superiors themselves may not hear the confessions of their subjects unless these have incurred a reserved case, or desire of their own free will to confess to them.

While on a journey, Religious should confess to their companion if they have one who is fit to hear their confessions. Such companion will be fit if he is in priest's orders, has the requisite knowledge of moral theology, and is not under censure. If they have no fit companion, Religious on a journey may confess to any other fit priest, whether secular or regular, even if he is not approved, unless approbation is required by the constitutions of the Order to which they belong.

3. The Church has made certain special laws with regard to the confessions of nuns. For each convent of

[1] While ordinarily confessing to the approved confessors of the house, a Religious may now confess to any priest who has faculties in the place and be absolved by him, even from cases reserved in the Order to which the Religious belongs, as often as he feels it necessary for the relief of his conscience. C.J.C., can. 519.

enclosed nuns there must be one ordinary confessor of mature years, who must be specially approved for that convent by the bishop, and the approbation is usually given for three years. Besides the ordinary confessor an extraordinary confessor must be offered the nuns two or three times a year,[1] who must have the same qualities as the ordinary confessor and must also be specially approved by the bishop for the particular convent. The extraordinary confessor usually visits the convent during the ember weeks, and when he comes all the nuns must present themselves to him to receive his blessing, even if they do not wish to confess to him.

Furthermore, by the decree (S.C.EE. and RR.) *Quemadmodum*, December 17, 1890, Superiors may not refuse the request of a nun who at other times, and especially when in danger of death, asks for some particular confessor for the good of her soul. If the Superior knows that the request is unreasonable or made without sufficient need, she may have recourse to the ordinary; and the confessor is not bound to go when asked for, if he knows that there is no good reason for his being summoned.

4. Enclosed nuns with solemn vows were specially had in view in the above legislation, but by degrees the same rules were extended to nuns with simple vows without papal enclosure, and Leo XIII expressly sanctioned this by his constitution, *Conditæ a Christo*, December 8, 1900.

When a nun is lawfully outside her convent she may go to confession to any approved confessor according to the mind of the Church, expressed in several decrees of the Roman Congregations and in the *Normæ* published June

[1] The extraordinary confessors must now be offered at least four times in the year. C.J.C., can. 521.

28, 1901. Sometimes bishops express a wish that nuns, especially if they habitually confess in a public church, should go to the head priest, when there are several in charge of a church. Such a wish or command should of course be obeyed by the nuns, but it does not deprive the other priests of the jurisdiction which they have received.

NOTE TO PAGE 192.

Bishops should take care that their flocks are informed about the cases which they reserve to themselves. The Canon Penitentiary can absolve from episcopal reserved cases. This power should also be delegated to Vicars Forane, who should be authorized to subdelegate it in particular cases. Parish priests can absolve from episcopal reserved cases during the time allowed for the fulfilling of the Easter precept, and missionaries during the time of missions. Reservations cease in the case of sick people who can not leave the house, in the case of a penitent who confesses with a view to marriage, in a particular case when the superior has been asked and has refused faculties, or when in the prudent judgment of the confessor faculties can not be asked for without either grave inconvenience to the penitent or danger of violating the seal of confession. C.J.C., can. 899, 900.

## CHAPTER X

### RESERVED CASES

1. The Council of Trent says:[1] "It hath seemed to our most holy Fathers to be of great importance to the discipline of the Christian people that certain more atrocious and more heinous crimes should be absolved not by all priests, but only by the highest priests." And so the absolution of certain graver sins and censures, or *cases* as they are called, is reserved to higher ecclesiastics. Ordinary confessors retain their jurisdiction for other sins, but it is limited, so that they have no authority over reserved cases. The motive for thus reserving sins is the spiritual good of the faithful, so that they may be deterred from committing those sins on account of the difficulty of obtaining absolution for them, and if unfortunately they should fall into them they may have more skilful guides than ordinary confessors are presumed to be.

2. Reservation is the limitation of jurisdiction, and so in general all those who have ordinary jurisdiction, when they delegate it to others, may reserve some cases for treatment in their own tribunal.[2]

In particular the Pope reserves certain censures and sins of all the faithful throughout the world. In nearly all papal cases both the censure and the sin are reserved, but the sin is reserved on account of the censure, so that

[1] Sess. xiv, c. 7. [2] See Note on page 191.

if through any cause the censure is not incurred, then the sin is not reserved. The constitution *Apostolicæ Sedis* of Pius IX contains a catalogue of most of the papal cases which have a censure attached. They are classed in series; the first contains cases specially reserved to the Holy See; the second, cases simply reserved to the Holy See; the third, cases reserved to the bishops; the fourth, cases reserved to no one, from which therefore all approved confessors may absolve. Besides the cases contained in the constitution *Apostolicæ Sedis*, priests who violate the rules laid down by the decree S. C. C., May 11, 1904, with reference to trading in stipends for Masses, incur suspension reserved to the Pope, and laymen incur excommunication reserved to the bishop. There is one papal case with no censure annexed, *i.e.*, false accusation of solicitation in the sacred tribunal, according to the constitution of Benedict XIV, *Sacramentum Pœnitentiæ*.

Bishops also may reserve cases to themselves, but these should not be too many; they should be only the more serious and atrocious crimes, and not those which the Pope reserves to himself. In England the First and Fourth Synod of Westminster reserved to the bishop the case of a priest going to the theater and thereby incurring suspension. In the United States two cases are reserved by provincial law: (*a*) the excommunication incurred by those who attempt to marry again after getting a civil divorce; (*b*) the excommunication incurred by those who marry before any non-Catholic minister.

Note. — The first of these two cases is expressed by the Third Plenary Council of Baltimore (n. 124) in the following words: "*Ad hæc crimina compescenda pœnam excom-*

*municationis statuimus, Ordinario reservatam, ipso facto incurrendam ab iis, qui postquam divortium civile obtinue rint, matrimonium ausi fuerint attentare.*" From the terms here employed it is clear that to incur this censure the person should have obtained a civil divorce before attempting another marriage. It is also required for the censure that the previous marriage should have been validly contracted and should still exist, since it was not the intention of the bishops to inflict excommunication upon one who had been invalidly married on account of some divine or ecclesiastical impediment, and, having procured a civil divorce in order to escape legal penalties, would contract marriage with some other. This is evident from the words immediately preceding those cited above: "*Novum matrimonium inire attentant legitimo vinculo posthabito, quod coram Deo et Ecclesia adhuc manet.*" It would also appear necessary for incurring this censure that the person should actually go through the form or ceremony of another marriage, and not sufficient, *e.g.*, to manifest the intention of contracting another marriage, nor even to make application to a priest or other person for this purpose, because the words "*novum matrimonium inire attentat,*" may fairly be taken to require the attempt of another marriage to be completed by a matrimonial ceremony. Ignorance of the censure on the part of the person who committed the crime to which the censure is attached is deemed sufficient to excuse from incurring it, even though the ignorance may have been gravely culpable. It would seem from the form of expression used, "*ausi fuerint,*" that knowledge of the existence of the censure is required in order to incur it, and that *ignorantia crassa*, or even *affectata*, would not suffice. This point is deserving of

special notice, because if the censure be not incurred, a priest possessing ordinary faculties may give absolution without having recourse to the bishop, since it is the excommunication which is declared to be reserved. Whether the excommunication affects both parties to the attempted marriage, or only the one who had obtained a civil divorce, is not quite evident. The words are capable of either interpretation, especially when the two parties who wished to contract marriage co-operated in procuring the divorce. However, according to the more exact meaning of the clause, it is the persons who obtained a divorce and then attempted marriage who are affected by the excommunication, and not those others with whom they attempt marriage. In some dioceses of this country excommunication is incurred by those who knowingly assist as witnesses (groomsman and bridesmaid) of such invalid marriages. In the statutes of the archdiocese of St. Louis (n. 119) the following words are added: "*Itemque testes authorizati, qui scienter sacrilege hujusmodi matrimonio assistant.*"

The second excommunication referred to by the author, as reserved in the United States, is set down in n. 127 of the Third Plenary Council of Baltimore. In general those Catholics who get married before a minister of a non-Catholic sect incur excommunication reserved to the ordinary. The censure affects any Catholic of the United States, whether he has been practising his religious duties as a Catholic or not; nor does it make any difference as regards this penalty, whether both contracting parties are Catholics or only one of them; in either case the excommunication is inflicted upon the Catholic. To incur this censure the marriage should be contracted before a minis-

ter of some non-Catholic sect. It is immaterial so far as the censure is concerned whether the marriage be valid or invalid. The impediment of *Disparitas Cultus* may exist, or both parties may be baptized and may have some diriment impediment, or there may be no diriment impediment whatever; in any of these cases the censure is equally incurred, because the words, "*contraxerit vel attentaverit*," in the decree plainly signify that even an attempted marriage is sufficient to incur the censure. It would appear from the words of the decree, "*coram ministro cujuscunque sectæ acatholicæ*," that the censure is incurred when the marriage ceremony is performed before the minister of any denomination, heretical, Jewish, or any other. Still the clause, "*coram ministro*" signifies something more than the actual presence of the minister. He may be present while the ceremony of marriage is being performed without having any share in the function; unless he officiate at the ceremony, the censure would not be incurred, since it is on account of the favor shown to the sect by its minister officially assisting that the censure is inflicted. If a civil magistrate perform the marriage ceremony, the censure is not incurred; even if the civil officer happened to be a minister of some sect, the censure would not appear to be incurred when he acted in his civil capacity only. The reason is that the marriage would not be celebrated before a minister as such, nor would the motive for the infliction of excommunication, *viz.*, favor to a non-Catholic sect, be present. It is also to be noticed that the excommunication imposed for this sin is reserved, so that a priest with ordinary faculties can not absolve the penitent. The particular manner in which the reservation is made is expressed in the decree itself (n. 127). If a

Catholic has committed the sin outside his own diocese, the censure is reserved to the bishops of the United States, any one of whom either personally or through a priest delegated by him can absolve from the excommunication. If the sin be committed within his diocese, the excommunication is reserved to the bishop of that diocese, who can absolve the penitent or communicate faculties to a priest for this purpose. In this latter hypothesis, when the crime was committed in the diocese of the penitent, it is provided that he may receive absolution from another bishop, to whom he would have recourse without any fraudulent intention of evading the law requiring him to refer the case to his own bishop.

Regarding this censure a question has been raised, *viz.*, How did the Third Plenary Council of Baltimore reserve this case since it had already been reserved to the Sovereign Pontiff? (Cf. Tanquerey, *De Matrimonio*, n. 251.) It is quite certain that those who get married before an heretical minister incur papal excommunication. The Congregation of the Holy Office (May 11, 1892) declared: "*Eos qui matrimonium coram ministro heretico ineant, censuram contrahere.*" Those who get married before an heretical minister incur the first censure of those specially reserved to the Roman Pontiff in the constitution "*Apostolicæ Sedis*," inasmuch as they are deemed "*fautores*" in relation to heretics. On the other hand, by a decree of the Sacred Congregation of Bishops and Regulars (November 26, 1602), held universally by theologians as still in force, bishops are forbidden to reserve cases already reserved to the Sovereign Pontiff. "*Prohibent etiam ne (Episcopi) sibi superflue reservent casus in Bulla Cœnæ Domini legi consueta contentos, neque alios Sedi Apostolicæ specialiter*

*reservatos*." Some answer this difficulty by saying that in the Third Plenary Council of Baltimore the bishops inflicted excommunication reserved to the ordinary on account of irreverence to the laws of the Church, scandal, etc.; while the papal excommunication was inflicted on account of suspicion of heresy. (Cf. Tanquerey, *l.c.*) According to this opinion, a bishop may reserve a case already reserved to the Roman Pontiff, if he reserve it from a different motive. It is not easy to reconcile this view with the obvious meaning of the decree just cited, where there is no reference to the different motives with which cases might be reserved, but a prohibition to reserve cases already reserved to the Holy See, whatever might be the motives of the reservation. A different explanation is given by Putzer (*Commentarium in Apostolicas Facultates*, 5th ed., p. 228, note 1), namely, that the papal excommunication is incurred when the marriage is performed by an heretical minister, and episcopal excommunication is incurred when it is performed by some other non-Catholic minister. This view has the merit of distinguishing between the two classes of cases, one of which is reserved to the Holy See, the other to the ordinary, so that it could not be said that the bishops were violating the prohibition of reserving a case already reserved to the Roman Pontiff. If this opinion be adopted, it follows that a priest having faculties to absolve from papal cases can absolve from the excommunication incurred by a person who was married by an heretical minister, but can not absolve one whose marriage was performed by any other non-Catholic minister, *e.g.*, by a Jewish rabbi. There does not appear to be any serious difficulty in holding this view, except that the clause, "*coram ministro cujuscunque sectæ acatholicæ*," em-

ployed by the bishops, is applicable to the minister of any non-Catholic sect, whether he be a heretic or not; in other words, the excommunication reserved to the ordinary is, according to the more natural meaning of the expression, incurred even when the minister is a heretic, because the universal term, "*acatholicæ*," should be taken as including the particular one, "*heretico*." Hence it is not evident that the bishops intended, as regards the infliction of the censure, to make any distinction between the case of a person getting married by a baptized minister and the case of getting married by an unbaptized one.

Another mode of explaining this excommunication may be proposed, *viz.*, that the Sovereign Pontiff in approving this decree of the Plenary Council permitted an exception to be made to the general law prohibiting bishops to reserve cases already reserved to him. Although by the approval of the decrees of this council *in forma communi*, the Holy See did not convey any guarantee for the canonical or theological accuracy of every statement contained in them, still such recognition affords some reason or presumption in favor of the validity and liceity of this excommunication as reserved to the ordinary. Perhaps a different explanation may be suggested, *viz.*, that the prohibition of reserving cases already reserved to the Holy See refers to bishops acting in their individual capacity, not in their corporate capacity as members of a plenary or provincial council. If either of these two explanations be admitted, the literal and obvious meaning of the decree is preserved and the prohibition of the Congregation of Bishops and Regulars is not violated. It need hardly be remarked that the bishops of the Third Plenary Council of Baltimore did not intend to place any

restriction upon the Sovereign Pontiff that would prevent him from granting faculties to whomsoever he might wish, even in cases reserved by the bishops to themselves. What the bishops did in the decree was in effect this, that as far as they were concerned they communicated to no priest the faculty to absolve from the excommunication incurred by a Catholic who attempted marriage before a minister (heretic or not) of any non-Catholic sect, so that unless the faculty would be obtained from the Roman Pontiff the absolution from the excommunication would be invalid.

Whichever of the foregoing opinions be the correct one, or if none of them be correct, it is the general practice of confessors, secular and regular, to have recourse to the ordinary for the faculties and for the directions to be followed in absolving penitents from this excommunication, whether papal, episcopal, or both combined. In some places, diocesan statutes prescribe that there should be a public retractation made in the Church by the penitent according to a specified formula before receiving absolution; in other places it is deemed more prudent not to insist upon a public retractation lest persons guilty of the crime might abstain from seeking absolution through fear of the humiliation incidental to the publicity, or lest the attention of many others be drawn to the frequency of the sin without sufficient counterbalancing advantages. In any case the directions of the bishop are to be exactly carried out in regard to the conditions for receiving absolution as well as the manner of imparting it. The bishop may require that the penitent be absolved *in foro externo* from the censure, and that the form prescribed in the Ritual for this purpose be observed. It frequently happens that the bishop empowers the priest to absolve from

the excommunication in the tribunal of penance without any absolution *in foro externo.*

It may be well to note that the excommunication, whether papal or episcopal, may not have been actually incurred by the person who was married by a non-Catholic minister, because ignorance of the censure, even though gravely culpable, may not reach that degree commonly called *crassa*, and, if so, would excuse from incurring it. This is not by any means a merely speculative point, as it is very well known to experienced priests that Catholics, while they may be aware of sinning grievously by obtaining the assistance of a non-Catholic minister at their marriage, have often no knowledge of the ecclesiastical law inflicting censure upon such act and thus may escape from incurring censure. When this occurs, *i.e.*, when the censure is not incurred on account of any reason whatsoever, there is no necessity to have recourse to the bishop for faculties, since it is the excommunication which is reserved according to the words of the decree, "*excommunicationem incurrere Episcopo reservatam.*" — END OF NOTE.

Besides these cases reserved by law the bishops reserve a few cases to themselves for which the *pagella* of faculties must be consulted. When the bishops reserve a sin with a censure attached to it, it is a disputed point whether the reservation of the censure is the primary object in view, as in papal cases, or whether the reservation of the sin and of the censure are of equal importance and independent of each other. The solution of the question depends on the intention of him who reserved the case, and so the terms used should be considered.

The Superiors of Religious Orders may also reserve cases of their subjects. Clement VIII issued a list of eleven cases which they might reserve, and forbade them to reserve others except with the consent of a general or provincial chapter of the Order.

3. Certain conditions are required in order that any particular sin may be reserved. First of all it must be a grave sin such as forms the necessary matter of confession, for a venial sin which the penitent need not confess can not be effectually reserved. It is not the practice of the Church to reserve merely internal sins; there must be an external act and as such gravely sinful. So that a slightly indecent word even if uttered with a seriously bad intention would not fall under reservation if all sins of indecency were reserved. The sin must be completed and perfect in its kind, not merely attempted, for reservation is to be strictly interpreted. For the same reason it must be certain that the sin is reserved, so that any prudent doubt of law or of fact whether a particular sin is reserved is sufficient to enable the confessor to give absolution without special faculties.

4. Those who are under the age of puberty do not incur papal cases unless they are expressly included in the law. The only papal case in which they are so included is the violation of the enclosure of nuns. The same rule may be applied to bishops' cases, unless a bishop has made known his intention to bind even those who have not reached the age of puberty. Ignorance of a censure, unless it be crass or supine, excuses from the censure, as is expressly laid down in the Decretals.[1] As in papal cases the reservation of the sin is on account of the censure annexed

[1] c. 2, de const. in 6to.

to it, and ignorance excuses from incurring this, therefore ignorance will excuse one from incurring papal reserved cases to which a censure is attached. The reservation of false accusation of solicitation, the only papal case without censure, is very probably penal, as theologians gather from the words used by Benedict XIV in the constitution *Sacramentum Pœnitentiæ*, and as ignorance of a penalty excuses one from incurring it, therefore ignorance will excuse one from incurring this reserved case.

It is a disputed point whether ignorance excuses from incurring bishops' cases or not. It excuses, indeed, from incurring any *censure* inflicted by any ecclesiastical superior, but it certainly does not excuse from incurring a reserved *sin* if the bishop has expressed his intention of reserving it even when committed in ignorance of the reservation. Otherwise it is probable that ignorance excuses in episcopal as well as in papal cases, for reservation is partly penal, and it can not attain its end of deterring the faithful from committing reserved sins if they are ignorant of the reservation.

It is a disputed point whether strangers are absolved by virtue of jurisdiction tacitly granted by their own bishop, or like other subjects of the bishop in whose diocese they are staying. It is very commonly held now that for the purpose of sacramental absolution a stranger is subject to the jurisdiction of the bishop of the place, like the rest of the faithful. Still the other view is probable, and so a stranger may be absolved from a sin which is reserved in the place where he makes his confession if it is not also reserved in his place of domicile, and on the other hand he may be absolved from a sin which is reserved in his own diocese if it is not reserved in the place

where he makes his confession. It is plain, however, that he can not be absolved without special faculties from a case which is reserved in both dioceses,[1] nor can he be absolved if he came fraudulently from his own diocese with the primary intention of escaping his own bishop, on account of a special clause in the constitution, *Superna*, of Clement X.

5. In general, absolution for reserved cases may be had from the person who reserved them, his successor, his superior who has jurisdiction over the same subjects, and from any one who has been specially delegated by one of these to grant absolution.

As we saw above, according to the Council of Trent, there is no reservation when the penitent is in danger of death, and so any priest may then absolve any penitent from every kind of censures and sins whatever. Nor, at least probably, does any obligation remain to be fulfilled in case of recovery by those who have been thus absolved, except when they have been absolved from cases specially reserved to the Holy See.[2] In that case, one absolved by a simple confessor is bound, if he recovers, by a clause in the constitution *Apostolicæ Sedis*, under pain of falling again under the same censure, to submit his case either personally or through his confessor to the Holy See, or to obtain absolution from a confessor with special faculties.

Moreover, when it is necessary for the penitent to receive absolution in order to avoid scandal, or loss of reputation, or because he must say Mass or make his Easter communion, or when he feels it a great hardship to remain in the state of sin for the time required to obtain special faculties, a simple confessor may absolve him directly from any papal case. The penitent, however, is then

[1] A penitent from another diocese can now be absolved from a case reserved by his own bishop even when he goes into the other diocese to obtain absolution from the reserved case. C.J.C., can. 900, 3°.

[2] An obligation of having recourse to the superior now remains

bound within a month under pain of falling again under the same censure to submit his case by letter or through his confessor or another priest to the Grand Penitentiary at Rome, or, in countries under Propaganda, to the cardinal prefect of that congregation, if he prefer to do so. The name of the penitent of course is not given, but the address to which the reply should be sent is indicated.

If there is no just cause for giving absolution at once, the case must be submitted by letter as above to Rome, asking for special faculties to give absolution which will be granted under the prescribed conditions when the reply arrives.

This method of treating papal cases was sanctioned by the decree of the Holy Office, June 23, 1886, and confirmed in detail by subsequent decrees. Confessors who have missionary faculties in England thereby receive authority at present to absolve their penitents from all papal cases except the attempted absolution of an accomplice in a sin against chastity, and the false accusation of solicitation.

NOTE. — In the United States very extensive faculties are granted to the bishops for absolving from papal cases, and these faculties may be subdelegated to priests engaged in the sacred ministry. Under Article 16, Form I, authority is conferred upon the bishops in the following words: "*Absolvendi ab omnibus censuris in Constitutione 'Apostolicæ Sedis moderationi,'* October 12, 1869, *Romano Pontifici etiam speciali modo reservatis, excepta absolutione complicis in peccato turpi.*" Without entering into an explanation of the censures given in this constitution, it may be observed that our bishops are empowered to absolve from them whether they are simply or specially

when absolution has been given from a censure *ab homine* or from a censure reserved *specialissimo modo* to the Holy See. C.J.C., can. 2252.

reserved to the Holy See. Having the faculties to absolve from papal censures, they can likewise absolve from the sins to which those censures are attached, since the sins are only reserved on account of the censure. According to Article 16 there is only one censure of the constitution *Apostolicæ Sedis*, in which the bishops are restricted, namely, the excommunication inflicted upon the confessor who attempted to absolve his accomplice *in peccato turpi*. In dealing with this censure our bishops do not possess any special faculty which would relieve them from the grave obligation of referring to Rome in accordance with the decree of 1886, even though they, like simple confessors, may absolve from the excommunication in urgent cases. There is no need to refer to a special faculty, which some of our bishops possessed, of absolving in a certain number of cases of this kind, either by themselves or by some one delegated by them. This faculty, if still possessed, is not of so much importance after the decree of 1886, when even simple confessors can absolve from the censure, while the obligation on the part of the penitent to have recourse to the Holy See within a month is to be fulfilled under the penalty of falling again into the censure from which he was absolved.

Besides the papal censures reserved to the Roman Pontiff in the constitution *Apostolicæ Sedis*, the bishops in this country can absolve from those censures which have been inflicted by the Sovereign Pontiff since the publication of that constitution, when these can be brought under some heading of the constitution. (Cf. Putzer, n. 140.)

It may be remarked that under Article 16 the bishops do not possess the faculty of absolving from censures

which the Sovereign Pontiff inflicts upon a person by judicial sentence or by special mandate; nor under that article is a bishop empowered to absolve from censures which are reserved to and by another bishop; nor has a bishop by the same article the faculty to absolve from censures reserved by Religious Superiors to themselves.

There is one papal case specially, or, more accurately, most specially reserved by the Sovereign Pontiff, yet without censure — false denunciation for solicitation — from which our bishops can not absolve except under the circumstances in which, like ordinary confessors, they could absolve in the case of the attempted absolution of the accomplice. To incur this reservation, it is required that the false statement against the priest be made on oath; otherwise a simple confessor can absolve from the sin without afterward referring the case to Rome.

To what extent the faculties for giving absolution possessed by the bishops are communicated to priests, may usually be learned from the *pagella*. The general practice in the United States is that the bishops grant to their priests all the faculties they can in regard to papal cases; while the cases reserved by themselves are very few. It is worthy of note that under Article 15, Form I, the Holy See has granted powers to our bishops regarding heresy, which powers may also be and generally are communicated to priests in the ministry. — End of Note.

Regulars also have certain privileges with regard to absolving from papal cases, the extent of which is known from the special grants made to them.

The method prescribed for papal cases is being applied also to bishops' cases [1] except that when absolution is

[1] The method prescribed for papal cases has been applied by the new Code to censures reserved by any superior. C.J.C., can. 2254.

given at once without special faculties on account of some necessity for receiving absolution on the part of the penitent, that absolution is indirect, not direct, unless the penitent will not be able to present himself to the bishop for the next six months. This is a consequence of the older discipline by which the penitent was bound to present himself personally to the Superior who had reserved the sin, or to his delegate. There was no obligation of writing to the Superior. If the penitent was prevented from presenting himself to the Superior for five years, the impediment was deemed perpetual and the reservation ceased. If the impediment lasted from six months to five years, any confessor might absolve the reserved sin directly; but the penitent was obliged to present himself to the Superior when he could do so. If the impediment did not last for six months, the confessor had no direct power over the reserved sin, but he might absolve directly from other sins and indirectly from the reserved sin if the penitent were for some cause obliged to seek absolution. The common practice, however, is for confessors who get a case reserved to the bishop in confession to defer absolution until special faculties can be obtained for the case from the bishop. The penitent will then again present himself to the confessor and receive direct absolution with the monitions of the bishop.

The method of dealing with Religious who have incurred cases reserved in their Order depends on the rules and constitutions of the Order. The members of exempt Orders are not themselves subject to episcopal reservations, though of course they can not absolve seculars who have incurred them without special faculties from the bishop.

Whenever the penitent can obtain direct absolution for

a reserved sin and desires to go to confession, he is bound to make a full confession, including the reserved sin. If, however, the only mortal sin on his conscience is reserved to the bishop, he is not bound to go to confession to a simple priest who can only give indirect absolution before holy communion, when he is compelled to receive communion to avoid scandal, loss of reputation, or other just cause; it will be sufficient if he make an act of contrition, for he has not an opportunity of confessing to a priest with the requisite jurisdiction. If he has other mortal sins besides a reserved case, some good authors still deny that he is bound to go to confession for the same reason, though the most common opinion binds him to go, for he can obtain direct absolution from the non-reserved mortal sins, as the confessor has jurisdiction for them, and at the same time he is indirectly absolved from the reserved sin. At any rate he will be bound at some future time to obtain direct absolution from the reserved sin.

## CHAPTER XI

### DE ABUSU SACRAMENTI PŒNITENTLÆ

1. Sanctissimis institutis abuti hominum malitia valet, nec sacramento Pœnitentiæ excepto. Ecclesia tamen nihil intentatum reliquit ut abusus hujus sacramenti eviteutur vel ut iis si forte occurrant aptum remedium præbeatur. Gregorius XV aliique Romani Pontifices et præsertim Benedictus XIV leges tulerunt contra sollicitationem in sacro tribunali ac absolutionem complicis in peccato turpi. De his in hoc capite agimus ac primo de sollicitatione.

De crimine sollicitationis in sacro tribunali Benedictus XIV Constitutione *Sacramentum Pœnitentiæ* tria statuit. Primo committit ac mandat omnibus locorum Ordinariis universi orbis christiani in suis respectivis diœcesibus ut diligenter omnique humano respectu postposito inquirant et procedant contra omnes ac singulos sacerdotes, tam seculraes quam regulares quomodolibet exemptos, qui sollicitationis sunt rei, eosque graviter puniant. Rei autem sunt sollicitationis qui aliquem pœnitentem, quæcumque persona illa sit, vel in actu sacramentalis confessionis, vel ante, vel immediate post confessionem, vel occasione, aut prætextu confessionis vel etiam extra occasionem confessionis in confessionali, sive in alio loco ad confessiones audiendas destinato aut electo, simulatione audiendi ibidem confessionem, ad inhonesta et turpia

sollicitare, vel provocare, sive verbis, sive signis, sive nutibus, sive tactu, sive per scripturam aut tunc aut post legendam, tentaverint, aut cum eis illicitos et inhonestos sermones vel tractatus temerario ausu habuerint. Secundo, omnes et singuli sacerdotes ad confessiones audiendas constituti tenentur suos pœnitentes quos noverint fuisse ab aliis sollicitatos sedulo monere de obligatione denunciandi locorum ordinariis personam quæ sollicitationem commiserit, etiamsi sacerdos sit qui jurisdictione ad absolutionem valide impertiendam careat, aut sollicitatio inter confessarium et pœnitentem mutua fuerit, sive sollicitationi pœnitens consenserit, sive consensum minime præstiterit, vel longum tempus post ipsam sollicitationem jam effluxerit, aut sollicitatio a confessario non pro seipso sed pro alia persona peracta fuerit. Tertio, potestas absolvendi eos qui sive per se sive per alios apud ecclesiasticos judices falso innoxios sacerdotes sollicitationis accusant reservatur Summo Pontifici, ut tam detestabile facinus metu magnitudinis pœnæ coerceatur.

2. Ex dictis igitur, quæ fere ad verbum in Constitutione Benedicti XIV inveniuntur, constat Ordinarios teneri sub gravi inquirere in sollicitantes ac hujus criminis reos graviter punire. Praxis Sacri Officii est ut post unam alteramve denunciationem sacerdos denunciatus observetur. Post tertiam vero contra suspectum procedi solet. Ad formale examen vocantur parochi aliique spectatæ virtutis viri qui de indole et qualitatibus denunciantis et denunciati sub juramento de veritate dicenda et de secreto servando testimonium proferunt. Pœnæ jure reis infligendæ sunt privatio omnium facultatum ad confessiones excipiendas, suspensio ab exercitio ordinis, privatio beneficiorum, privatio vocis activæ et passivæ si sit regularis,

omnes tamen sunt ferendæ sententiæ. Termini adhibiti in crimine definiendo strictæ sunt interpretationis. *In actu sacramentalis confessionis:* hoc intelligendum est de intervallo quod intercedit inter benedictionem et absolutionem etiam si pœnitens non fuerit absolutus ob defectum dispositionum vel ob aliam causam.

*Ante vel immediate post:* ita ut nulla actio non referibilis ad sollicitationem intercesserit.

*Occasione vel prætextu confessionis:* occasio est quando confessio sequebatur vel sequi debebat juxta intentionem petentis. Prætextus habetur quando confessarius ficte proponit confessionem ut sollicitet. Quare si mulier et sacerdos fingunt confessionem faciendam ad alios decipiendos et ad tutius peccandum non est locus denunciandi, nec probabilius si pœnitens prætexat confessionem ad sacerdotem vocandum et sollicitandum. Probabilius non est denunciandus sacerdos qui propter cognitam ex confessione fragilitatem mulieris eam domi sollicitat, quia occasione scientiæ ex confessione habitæ sollicitat, non occasione confessionis.

*In confessionali sive in alio loco ad confessiones audiendas destinato aut electo simulatione audiendi ibidem confessionem:* unde non denunciandus est sacerdos qui sollicitat mulierem stantem ante confessionale, deest enim simulatio audiendi ejus confessionem.

*Inhonesta et turpia:* haec significant gravia peccata contra sextum decalogi præceptum. Graviter inhonesti sermones vel tractatus quin ulterius procedatur constituunt sollicitationem si ceteræ conditiones habeantur. Qui externe consentit pœnitenti sollicitanti videtur esse denunciandus.

3. Omnes confessarii monere suos pœnitentes, sive

feminas sive masculos tenentur quos ab aliis sacerdotibus fuisse sollicitatos noverint de obligatione denunciandi sacerdotes sollicitantes locorum ordinariis vel Sanctæ Sedi per Sacrum Officium vel per Pœnitentiariam. Infra mensem ab accepta cognitione denunciationis faciendæ obligatio est implenda, aliter pœnitens sollicitatus incurrit excommunicationem nemini reservatam ex Constitutione Pii IX, *Apostolicæ Sedis*. Omnes etiam qui certo sciant casum sollicitationis sacerdotem reum denunciare tenentur, non tamen sub censura. Confessarii monere pœnitentes de obligatione denunciandi sollicitantes tenentur, etiamsi prævideant eos obligationem non impleturos, nisi sint in articulo mortis, tunc enim dissimulare ob salutem animæ licet. Nec capax est absolutionis qui onus implere recusat vel saltem nisi promittat se onus impleturum quum primum poterit. Confessarius audiens pœnitentem qui sollicitatus fuisse videtur, circumstantias casus investigare debet ut moralem certitudinem de crimine patrato acquirat antequam obligationem denunciandi sollicitantem imponat. Denunciatio juridice est facienda, ac proinde qui denunciat personaliter adire debet ordinarium loci ubi crimen patrabatur, ac sub juramento testimonium dare. Qui ordinarium adire nequit, ad eum scribat, ut delegatum sibi substituere valeat ad denunciationem accipiendam. Scriptæ denunciationes anonymæ nullius sunt momenti, nec sufficiunt ad obligationi satisfaciendum.

Qui falso juridice accusat sacerdotem sollicitationis gravissimum committit peccatum cujus absolutio specialissimo modo Romano Pontifici reservatur.[1]

4. Ex eadem Constitutione Benedicti XIV, *Sacramentum Pœnitentiæ*, confessarius pœnitentem quocum peccatum grave contra castitatem commiserit a peccato complicem

[1] This crime is now reserved *speciali modo* to the Holy See. C.J.C., can. 2363.

absolvere nequit; qui autem talem complicem absolvere attentat in casum incidit specialissimo modo reservatum Romano Pontifici. Eandem pœnam incurrit qui se absolvere fingit vel, sive directe sive indirecte, complicem inducit ad peccatum complicitatis tacendum quum ad confessionem venit. Si vero pœnitens bona fide vel inadvertenter peccatum complicitatis omiserit dum complici confitetur valide ab eo absolvitur. Idem videtur dicendum si complex ab alio sacerdote directe a peccato complicitatis jam absolutus idem peccatum postea tamquam materiam liberam sacerdoti complici confitetur. Præstat autem ut sacerdos complex nunquam confessionem complicis excipiat nisi in casu necessitatis.

Complex vero in peccato turpi hic intelligitur qui interne et externe grave peccatum contra castitatem sive verbis sive aspectu sive facto cum sacerdote etiam ante sacerdotium susceptum commiserit. Ut incurratur censura absolutio debet esse formalis ita ut sacerdos sciat se absolvere pœnitentem complicem, vel saltem ut ejus ignorantia sit crassa et supina. Requiritur etiam ut pœnitens cognoverit se peccasse cum hoc sacerdote sive in actu peccati sive saltem ante absolutionem acceptam, quamvis non sit necessarium ut pœnitens confessarium in actu confessionis agnoscat. Sacerdos igitur qui larvatus et incognitus cum muliere peccavit eam adhuc ignorantem suum complicem absolvere valide potest, nam aliter sese proderet pœnitenti ac alii confessario ad quem pœnitens absolutionis causa accederet.

5. In articulo seu periculo mortis absolutio complicis data a complice sacerdote semper est valida ne anima pereat, ait Benedictus XIV. Præterea complex moribundus qui nequit aut non vult alteri sacerdoti confiteri licite

etiam a complice sacerdote absolvitur. Si vero alius sacerdos etiam non approbatus adsit, vel sine infamia et scandalo advocari possit ad confessionem accipiendam, sacerdos qui complicem in periculo mortis constitutum absolvat excommunicationem non evitat.

In locis remotis ubi complex alium confessarium habere nequit, et in periculo est ne sine absolutione discedat e vita, potest probabiliter a complice absolvi ne anima pereat. Poterit etiam sacerdos facultatem obtinere ut complicem in tanta necessitate absolvat.

## CHAPTER XII

### THE DUTIES OF A CONFESSOR IN THE CONFESSIONAL

The confessor does not satisfy his obligations merely by absolving the penitents who come to him, and refusing absolution to those who are not properly disposed. In the confessional he holds the place of Christ for the reconciliation of sinners with God; he is also the minister of the sacrament, and as such he is bound to see that it is validly and lawfully received by the penitent. In other words, as theologians say, the confessor is the spiritual father, doctor, counselor, and judge of his penitents. Something must be said on each of these heads.

### Section I

### *The Confessor as Spiritual Father*

The confessor should remember how Our Lord used to act toward sinners during His mortal life; with what charity, forbearance, and patience He dealt with them, and he should strive to imitate his divine model. Like Him he should be interested in the souls of men, not in their social position, age, or sex. Whoever they may be, he should receive all sympathetically and kindly. This does not mean that he should treat all precisely in the same way. Just because of his interest in his penitents and of his sympathy for them, he will treat them as their

various needs demand; not expecting the same degree of virtue in all, nor attempting to raise all to the same height of sanctity. He should try to discover what God designs for each soul and be content to second the inspirations of the Holy Spirit.

In dealing with pious penitents, especially of the other sex, he should be brief and austere, otherwise he will lose much time with little or no fruit, and expose himself to no little danger. With these penitents, especially, he should treat of nothing in the confessional except what concerns their consciences, and that in a fatherly way, but briefly. Even if he recognizes his penitents, it will be better as a rule not to show that he knows them for what they are outside the confessional. He will thus be able to deal with them for the good of their souls with more freedom and detachment.

## Section II

### *The Confessor as Physician of Souls*

1. It is the confessor's duty not merely to reconcile the sinner with God by absolving him from sin, but by suggesting to him means and remedies against relapse to enable the penitent to lead a good life in future. The confessor is the spiritual physician of souls, and he should be skilled in diagnosing the diseases of the soul, and in applying the proper remedy. Catholic literature is very rich in ascetical books whose special province it is to map out the way of spiritual progress, to point out and describe the many vices and other obstacles to be overcome by the Christian wayfarer, and the means to be taken for the purpose. Among the best known of such works are: Rod-

riguez' "On the Practice of Christian Perfection," "The Devout Life" of St. Francis of Sales, "The Spiritual Exercises" of St. Ignatius, "The Spiritual Combat," by Scupoli, etc. The confessor should make himself as familiar as possible with one or two such treatises, and he should have tested their worth by applying the lessons which they give to the conduct of his own life. Here it will be sufficient briefly to indicate some general remedies which may be usefully prescribed in most cases where there is a sincere desire to amend. Frequent and fervent prayer, frequent reception of the sacraments of Penance and the Eucharist, pious meditation on the end of life and on the presence of God, avoiding evil company and the occasions of sin, avoiding idleness by constant occupation of mind and body, as far as is possible. Besides these general remedies, the confessor may suggest special ones for the correction of particular vices. The selfish and thoughtless should be told to practise kindness to those about them; the proud, acts of humility; the voluptuous, mortification of their passions; the envious, praising the good deeds of others; and so on. There is special difficulty as to the best method of treating recidivists and those who are placed in an occasion of sin, and something must now be said on each of these classes.

2. A recidivist is one who after many confessions has fallen into the same sin without any or scarcely any amendment. There is a controversy among theologians as to whether and on what conditions such a one may be absolved. Certain rigorists maintained that a recidivist could not be absolved until, by abstaining from sin for a considerable time, he had proved the sincerity of his conversion. According to the judgment of St. Alphonsus

there is intolerable rigor in this opinion. On the other hand, laxists held that a penitent who has contracted a habit of sin should be absolved at once without delay even though there be no hope of amendment, provided that he make verbal profession of his sorrow and purpose of amendment. The foregoing proposition was condemned by Innocent XI, and if it were put in practice it would lead to grave abuses. For a confessor can not give absolution to one whom he can not reasonably judge to be truly sorry for his sins. There are cases where in spite of verbal protestations the confessor can not form even a probable judgment that the recidivist is truly sorry for his sins. And sometimes it will benefit the penitent to defer absolution for a short time even if it might absolutely be given at once. The common opinion lies between these two extremes, and we can not do better than explain it in the words of Lugo, for the lengthy discussions of subsequent authors on this question have added nothing of substantial value to the older doctrine.

*a.* If a confessor judge a penitent, notwithstanding a past habit of sin, to have here and now a true sorrow and a firm resolve not to sin again, he can absolve him; because present sorrow and a purpose of amendment are sufficient, and future amendment is not required. And so he may absolve him even though he thinks he will fall again.

*b.* But in the second place it is certain that when a priest, considering the past habit of sin, the propensity to it, and other circumstances, can not judge the penitent to be sufficiently averse from the sin, he can not absolve him, however much the penitent asserts that he is sorry, because if the priest does not believe him he has not the requisite ground for giving absolution.

*c.* It will help toward forming a judgment about the present dispositions of the penitent if he show special signs of sorrow, or if he has already tried to correct his habit, or if having never before been told what means to employ to correct his habit, now, on being told, he willingly accepts and proposes to employ them.

*d.* Finally, it will sometimes be useful to put off absolution for some days so as to excite the penitent to make greater efforts to overcome himself and show signs of real amendment.[1]

3. An occasion of sin is an external circumstance which leads one to commit sin. It is a proximate occasion if, when a person is placed in it, it leads him to commit sin oftener than not; otherwise it is remote. It is a necessary occasion if he can not avoid it by using ordinary diligence; otherwise it is voluntary.

*a.* There is no necessity to avoid remote occasions of sin, for it is not possible to do so, and in spite of them sin may be avoided by using the proper means.

*b.* We are bound to avoid proximate and voluntary occasions of sin, for we can not remain in them without exposing ourselves to the proximate danger of committing sin, and if we voluntarily choose to remain in a proximate occasion we voluntarily choose the sin. As we are bound to avoid sin we are bound to take the necessary means for that end. This doctrine is confirmed by the 61st, 62d, and 63d propositions, condemned by Innocent XI.

*c.* A necessary occasion is one which we can not avoid. It is physically necessary if we can not physically get away from it; it is morally necessary if it is more difficult to

[1] Lugo, de pœnit. xiv, n. 166.

avoid it than to keep from sin while in it by using proper means and precautions.

There is no obligation to avoid necessary occasions of sin, for we can not be obliged to do what is impossible; but we are bound to take the necessary means to avoid sin in spite of being in the occasion, and such means are always at hand if we have the good will to use them, for God's goodness will never permit us to be tried above our strength. By using the means to avoid sin while placed in an occasion of sin, we make the proximate occasion remote, as theologians say.

It follows from this that one who finds his ordinary avocation in life, which is supposed to be an honest one, a proximate occasion of sin to him, is seldom bound to give it up; he is only bound to make the occasion remote, which is generally possible with a good will and the help of God's grace.

## Section III

### *The Confessor as Counselor*

1. The duties of the confessor require considerable expert knowledge in one who aspires to the office. He must in the first place have a competent knowledge of Christian morals and of all that belongs to the valid and lawful administration and reception of the sacraments. St. Alphonsus teaches us that it is not sufficient merely to know the general principles of Christian morality; the confessor must have considerable skill in applying those principles correctly, according to the infinite variety which is found in human actions. The confessor should have received a thorough grounding in moral theology during

the course of his priestly studies, and he should continue to keep it up during the rest of his life, for it is quickly lost unless means are taken to keep it fresh in the mind. The Church shows that she is conscious of this danger by insisting that all who have the cure of souls should at certain times every year be present at the conferences of the clergy, where moral questions are discussed. Every confessor is not called upon to be an authority in moral questions, but at least he should be able to decide correctly ordinary doubts and difficulties, and know when to doubt about more serious questions.

2. The confessor is bound to instruct a penitent before he can give him absolution when he finds that he is ignorant of what he must know in order to receive the sacrament of Penance validly and lawfully. And so if the penitent does not know how to make an integral confession, or how to make an act of contrition, the confessor must instruct him. In the same way, he must teach one who is ignorant of those truths which must be believed in order to be saved. Innocent XI condemned the proposition that a man is capable of receiving absolution however great may be his ignorance of the mysteries of the Faith, and even if through culpable negligence he does not know of the mystery of the most blessed Trinity and of the Incarnation of Our Lord Jesus Christ. Ignorance of those Christian truths whose knowledge is required by precept, and of the obligations of one's state of life, is not a bar to valid absolution, and in spite of it absolution may lawfully be given on condition that the penitent undertake to learn what he should know, if the confessor can not give the necessary instruction at once.

3. No general rule can be laid down as to whether the

confessor should instruct a penitent whom he finds to be ignorant on other matters. Various cases must be distinguished. If the ignorance of the penitent is morally hurtful to him, as is an erroneous conscience which thinks that a perfectly harmless act is sinful, the confessor should put his conscience right. Again, if the penitent asks whether an action is lawful or not, the confessor should instruct him. In other cases, if the penitent is ignorant of his obligation, and he would not fulfil it even if he were told, as a general rule the confessor may and should abstain from telling him under the circumstances. For the information would do no good, but only harm, inasmuch as the sins which hitherto were only material would henceforth be formal. There is, however, an exception to this rule when what is done in ignorance and good faith is a cause of public scandal, for then the public good requires that the penitent should be told even to his temporary private loss.

On these principles authors agree that if a confessor detect a diriment impediment between parties who think that they are validly married, he should not inform them of it, at any rate until he has obtained the necessary dispensation, so that he can at once proceed to set the matter right.

## Section IV

### *The Confessor as Judge*

1. As judge in the tribunal of Penance the confessor passes sentence and imposes satisfaction proportionate to the sins confessed. If the penitent makes a full confession, is truly sorry for his sins, and is ready to fulfil to the best

of his ability all his grave obligations at least, there is nothing to prevent the confessor giving a penance and absolution at once. There is no necessity for putting questions to well-instructed penitents who make their confession with care and diligence, or to those who have only light matter to confess. If however, the penitent does not fully declare the number and species of his grave sins, or if the confessor is not satisfied about his dispositions, he is bound to question him to procure a full confession and the necessary dispositions before giving absolution.[1]

If the confessor knows that the penitent has committed some serious sin, but says nothing about it in confession, he should question him as to whether there is anything else on his conscience. If the penitent denies that there is, he should as a rule be absolved; it is a received maxim that "the penitent must be believed in his own favor as well as against himself." Even if the sin was known to the confessor from the confession of some one else, he must not of course put any question which would amount to a violation of the seal, but he may put a general question as to whether there is anything else, and if the penitent denies that there is, he may as a rule absolve even then. It may be that the penitent did not commit formal sin, or that he has forgotten it, or thinks that he is not bound to mention it to this confessor, or there may be some mistake on the part of the confessor or the informant. Still if it is quite evident to the confessor that the penitent is making a bad confession, and so is not disposed for absolution, he can not, of course, absolve him.

2. The confessor's obligation of putting questions to the penitent in order to supply any defect on the part of the

[1] 4 Lat. c. 21; Ritual.

latter, is a grave one. Still it is only secondary; the obligation lies with the penitent in the first place, and so the confessor may be excused from grave sin if occasionally he does not put questions even to obtain what is necessary matter for confession. We may allow this especially when the confessor is weary after hearing a great many confessions, and, partly through weariness, partly through some slight negligence, fails to ask questions which are *per se* necessary.

3. The Ritual and theologians warn the confessor against putting unnecessary and indiscreet questions to the penitent. By doing so he may easily scandalize him or even teach him to commit sin. This is especially the case with regard to the young. In the matter of chastity it is a maxim that it is better to fail in putting many questions than to put one which is not necessary.

The confessor should be moderate in questioning the penitent, and only put questions about matter in which it is probable that he has committed sin. He should remember that the penitent is only bound to confess what his own conscience accuses him of; he does not sin nor is he bound to confess according to the conscience of his confessor.

## CHAPTER XIII

### MISTAKES MADE IN HEARING CONFESSIONS

1. One who culpably causes unjust harm to another is bound in justice to repair that harm as far as he can. Even if the action which causes harm to another is done innocently, there will nevertheless arise an obligation to prevent the harm as far as possible as soon as the danger is noticed, and if there is grave negligence in doing this without reasonable excuse, injustice will be committed and the obligation of making restitution incurred. A confessor who admits a penitent to confession is bound in justice to absolve him if he is properly disposed for absolution. And so if he has neglected to do so, he must repair the error afterward, especially if the penitent were in danger of death and may die in sin without sacramental absolution.

Similarly, if the confessor gave his penitent false instruction in faith or morals, or bad advice, or bound him to make restitution when he was under no obligation to do so by the law of God, or released him from such an obligation when he was really under it, the confessor must afterward correct his mistake, taking the precaution to ask the penitent's leave to say something to him about his confession if an opportunity is afforded him only out of confession. When the penitent was wrongfully compelled to make restitution with grave fault on the part of the confessor, the latter is bound in justice to make him

restitution for the loss that he has suffered, if he can not otherwise recover his money. The confessor is in the same way bound to make restitution to the defrauded creditor when with grave fault he released a penitent from the obligation of paying a just debt, if in consequence the penitent is now unwilling or unable to fulfil his obligation.

2. If the confessor merely neglected to impose a penance, or supply for the deficiency of the penitent's confession by questioning him, or failed to correct some mistake that he was laboring under, or to warn him of the obligation of making restitution, he did not thereby sin against justice, and he is not bound to make restitution, unless indeed in the circumstances his silence was equivalent to positive approval. Still, if knowingly and wilfully he did any of these things, he committed sin, and in as far as harm to his penitent or to others ensued he violated charity, which obliges every man to do what he can to prevent loss and damage to others. Even out of confession if he can prevent harm being caused by his failure to do his duty in the confessional, he should with the penitent's leave do his best to prevent it.

## CHAPTER XIV

### THE SEAL OF CONFESSION

1. By the seal of confession is understood the religious obligation to keep secret anything that is manifested in sacramental confession.

This obligation is imposed by the natural, the divine, and by positive ecclesiastical law. For the very fact that a penitent who makes known his sins in secret to the confessor with a view to obtaining absolution, lays upon the confessor the strictest obligation in justice and in charity not to violate the trust placed in him, much as a doctor or a lawyer when consulted about private matters is bound to observe secrecy with respect to what has been confided to him. Our Lord, who commanded all who fall into grave sin after Baptism to go to confession, could not have imposed such an obligation without requiring confessors to observe the strictest secrecy about what they hear in confession.

The Church, too, in the Fourth Council of Lateran (c. 21) forbids the confessor under grave penalties ever to betray by word, sign, or in any other way, what he has heard in sacramental confession.

The obligation of the seal of confession differs from all other secrets in that it is never lawful under any circumstances to make known the least thing that has been manifested by a penitent in confession. If questioned

about confessional matter, even in a court of justice, the priest must always answer that he knows nothing about it, as with perfect truth he may do, for what he knows as a confessor, he knows as the vicegerent of God, not as man. Not even to save his life or the lives of others may a priest violate the seal; like Fr. Henry Garnett, or St. John of Nepomuk, he must be prepared to lay down his life rather than break the seal. He is never released from his obligation even by the death of the penitent, for people are unwilling that their secret sins should be mentioned even after their death.

A grave sacrilege would be committed by the direct manifestation of the least fault known from sacramental confession, but theologians allow that if the danger of confessional matter becoming known is very remote there may be only venial sin in indirect violation of the seal.

2. The person who hears the sacramental confession of another made with a view to obtaining absolution is primarily bound by the seal. Even if such a person were not a true priest but merely represented himself to be one, he would, nevertheless, be bound by the obligation of the seal, for he could not violate the trust placed in him without such violation injuring the penitent and turning people away from the sacrament.

Not only the priest, but all others, who mediately or immediately come to know anything confessed to a priest with a view to absolution, are bound by the obligation of the seal. Superiors, then, who are asked for faculties to absolve from reserved cases, other confessors whose advice is asked about cases of conscience, any one who by design or by accident overhears what is said in confession, are bound equally with the confessor. The obligation of the

seal is imposed in favor of the penitent; it is the penitent's secret, but he himself is not bound by it. It does not follow, however, that penitents may without let or hindrance talk to others about what the confessor has said or done to them in the confessional. They are at least bound by a natural obligation to reveal nothing which would tend in any way to injure or aggrieve the confessor A confessor may speak with the penitent in the confessional about past confessions in as far as this is necessary for the present guidance and instruction of the penitent; but outside of confession he may not speak of confessional matter even to the penitent without the latter's express leave freely given. There is a question discussed among theologians as to whether one who finds and reads the written confession of another violates the seal or is bound by it. It is better to distinguish various cases. If the circumstances in which the paper is found show that it has been used for the purpose of making a sacramental confession, as when it is found in the confessional, then the written confession is a sort of continuous confession, and knowledge derived from it comes under the seal. The same must be said of a letter written to an ecclesiastical superior for faculties to absolve from a reserved case. Otherwise, inasmuch as the writing down of one's sins is not sacramental confession, knowledge gained from such a source without reference to actual confession does not seem to come under the seal.

Similarly, there is a difficulty about giving or refusing to the penitent an attestation that he has been to confession. If the penitent is unworthy of absolution and has not been absolved, but asks for the confessor's attestation that he has been to confession, what is the latter to do? If the refusal of the attestation would in the circumstances

show that the penitent was not absolved, it is clear that it cannot be refused without a violation of the seal; in other circumstances the confessor will be free to give or refuse it.

3. Not only all sins mentioned in confession are the matter of the seal, but everything which was mentioned because it was thought to be a sin, and every circumstance which was mentioned in order to make a full confession and whose manifestation would tend to injure the penitent or make confession odious, comes under the seal. And so if one who is under a vow of chastity mentions the fact in order to make a full confession of a sin of impurity, the fact that the person is under vow is protected by the seal. In the same way moral and social defects, such as scrupulosity and illegitimacy, come under the seal if they were made known with reference to confession, and if their manifestation would be to the injury of the penitent or make confession odious.

The virtues of a penitent are not the matter of the seal, nor does a confessor seem to violate his obligation if he merely says that he has heard the confession of such a one, unless on account of special circumstances it would cause injury to the penitent or make confession odious. Nor does a confessor whose watch was stolen by a penitent while making his confession break the seal by giving information of the theft to the police.

4. The seal may be broken directly or indirectly. It is broken directly when the confessor says that such a penitent told him such a sin in confession. It is broken indirectly when the confessor says or does anything or abstains from saying or doing anything from which others may come to the knowledge of confessional matter, or by which the penitent may be aggrieved or confession made

odious. A confessor, then, indirectly violates the seal by changing his conduct to the detriment of the penitent in consequence of what he has heard in confession; by saying that a certain sin is rife in a place in which he has heard few confessions; by talking with another confessor about the sins of a penitent of both of them.

It used to be a common view among theologians that ecclesiastical superiors might use knowledge gained in hearing confessions for external government, provided that in such use there was no direct or indirect revelation of confessional matter. After the decree of Clement VIII, May 26, 1593, and that of the Holy Office, November 18, 1682, this opinion has become obsolete, and now it is universally held that no knowledge gained in the confessional can be used by the priest for external government if such use aggrieves the penitent, or makes the sacrament odious, or otherwise directly or indirectly violates the seal.[1]

In spite of the strictness of the seal the confessor may make use of knowledge gained in the confessional to correct his own faults, to treat his penitents and others with more kindness, to learn by experience how better to fulfil his duties as confessor, how to preach more fruitfully, but always with prudence and without giving any just cause of complaint to his penitents.

[1] By the new Code severe penalties are inflicted on priests who violate the seal of confession. C.J.C., can. 2369, sec. 1.

# BOOK VI

## EXTREME UNCTION

### CHAPTER I

#### THE NATURE OF EXTREME UNCTION

1. The Council of Trent defined that Extreme Unction is a true sacrament of the New Law insinuated by St. Mark and promulgated and recommended to the faithful by St. James when he wrote: "Is any man sick among you? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord: and the prayer of faith shall save the sick man; and the Lord shall raise him up; and if he be in sins they shall be forgiven him." [1]

This sacrament, as the Council of Trent also teaches, is the complement or completion of Penance. As we have seen, Penance was specially instituted for the remission of post-baptismal sin, and its reception is necessary for all Christians who have fallen into grave sin after Baptism. Penance, then, ordinarily precedes Extreme Unction, which is properly a sacrament of the living; its primary effect is to infuse sanctifying grace into the soul for the salvation of the sick man. If any sins still remain on the soul, provided that there be at least attrition for them, they will be remitted together with the remains of sin. By the

[1] James v. 14, 15

remains of sin are understood the temporal punishment due to them, spiritual weakness and inclination to evil, lethargy in the doing of good. The sacrament removes these wholly or in part, according to the dispositions of the recipient, and, moreover, if it be for the good of the sick person and in keeping with the providence of God, it restores him to bodily health. This last effect is not produced by miracle, but by means of natural causes; the sacrament consoles and soothes the sick person, dispels his mental anxieties, and the resultant state, with the blessing of God, sometimes brings about a recovery. In order to produce this effect with more certainty the administration of the sacrament should not be too long deferred.

2. The remote matter of Extreme Unction is olive oil blessed by a bishop. Ecclesiastical law requires that priests obtain the oil of the sick from their own ordinary, not from any other bishop.

The proximate matter is the anointing with oil of the principal organs of the senses, and where the organs are double both are anointed, the right one first. In England, according to the Ritual, the eyes, ears, nostrils, mouth, hands, and feet, are anointed; but when the recipient is a woman in a public infirmary or hospital the priest has a special leave to omit the anointing of the feet if he thinks that it would excite scandal or comment.[1]

NOTE. — In the United States there is no special leave to omit the anointing of the feet when a female is receiving Extreme Unction in a public hospital: nor would there seem to be here any danger of scandal that would excuse from it. There is a legitimate custom, however, in this

[1] The unction of the feet may now be omitted for any reasonable cause. C.J.C., can. 947, sec. 3.

country to omit the unction of the loins of males, as appears from the Excerpta of the Roman Ritual published for the United States, and also from Kenrick, Sabetti, and others; but there is no such custom in favor of omitting the unction of the feet, whether of males or females. There may, however, exist a grave reason, *e.g.*, when the feet are enveloped in plaster of Paris or when some serious inconvenience would arise to the patient, which would justify its omission. — End of Note.

If some sense-organ is wanting, the part of the body nearest to where it should be is anointed. Each anointing has its own special form, that for the eyes being: "By this holy anointing and through His most sweet mercy may the Lord forgive whatever sins thou hast committed through thy sight. Amen." The form for the other senses is similar. If the near approach of death will not allow of all the senses being anointed with their appropriate forms, the forehead may be anointed with the following general form: "By this holy anointing may the Lord forgive whatever sins thou hast committed. Amen." [1] As, however, Extreme Unction is only probably valid when administered with such a single anointing under one general form, if there is time it should be repeated immediately in the form prescribed by the Ritual.

[1] S.O. April 25, 1906.

## CHAPTER II

### THE MINISTER OF EXTREME UNCTION

Only a bishop or a priest can validly administer this sacrament, and the only lawful minister is the bishop or priest who has the cure of souls in the place where the sick man dwells, or another priest with his express or at least reasonably presumed leave. If a Religious presumes without the leave of the parish priest to administer this sacrament or the Viaticum to laymen or to clerics, except in a case of necessity, he incurs excommunication reserved to the Holy See by the constitution *Apostolicæ Sedis*.

Note. — The reader must not infer from the statement here made that a Religious who administers Extreme Unction or the Viaticum without the leave of the pastor in the United States incurs this excommunication. As there are no parish priests properly so called in this country, the excommunication is not incurred. See Genicot, vol. 2, n. 604; also Sabetti, n. 1002, where he says that except in the province of San Francisco this censure has no application to the United States. That this province does not form an exception, the reader may consult Putzer, *Commentarium in Apostolicas Facultates*, n. 113. Although Religious in the United States are not affected by this censure, it does not follow that they are at liberty to administer either of these two sacraments without leave

of the ordinary or of the priest having pastoral charge of the district. — End of Note.

In the Latin Church one priest performs all the unctions, but the sacrament is valid if different priests perform the several unctions, as is done in the Greek Church. The organs should not merely be touched with the holy oil, but anointed, and the Ritual prescribes that this should be done by making the sign of the cross on the organ with the thumb after dipping it in the oil. Care should be taken not to finish the form before both organs have been anointed when they are double, and the several anointings should be done continuously, as it is probable that all together constitute the sacrament by which grace is not given until the last anointing is finished.

## CHAPTER III

### THE RECIPIENT OF EXTREME UNCTION

1. In order to be able to receive Extreme Unction validly a man must be baptized, must have attained the use of reason, and must be in probable danger of death from sickness. Extreme Unction, then, may be administered to those adults who are in danger of death from disease, from the pains of childbirth, from a wound, from poison, and from old age, even though they be no longer in their right senses. It can not be validly given to soldiers before going into battle, to criminals who are going to be executed, to imbeciles who have never had the use of reason, to children who have not yet come to the use of reason, or to unbaptized persons.[1]

2. This sacrament may only be given once in the same sickness and in the same danger, but if the sickness be prolonged and after partial recovery the sick person again becomes dangerously ill, Extreme Unction may be repeated. According to some good authors it may be repeated after a month's interval, for as a general rule the danger may be considered a new one after such a period of time.

No good Catholic would wish to depart this life without the help of this and the other sacraments; still there is no obligation under sin to receive Extreme Unction. But although the faithful who, without despising it, neglect

[1] Ritual.

to receive this sacrament do not thereby commit sin, yet a priest who has the cure of souls would sin grievously if he neglected to give those under his charge the opportunity of receiving this sacrament in their last sickness. As soon as there is probable danger of death the last sacraments may be given in the following order: Penance, Viaticum, Extreme Unction, and finally the papal blessing for the moment of death.

# BOOK VII

## THE SACRAMENT OF ORDERS

### CHAPTER I

#### THE NATURE OF ORDERS

1. The priesthood of the New Law is not a mere office and bare ministry of preaching the Gospel: Our Lord instituted it and gave it the power of offering the sacrifice of His body and blood and of forgiving sins.[1] This power is conferred on priests by the sacrament of Orders, which also gives the grace to those who are rightly ordained to perform their sacred functions worthily. Those functions are various, and partly by divine institution, partly by ecclesiastical, they have been divided and assigned to separate grades of a spiritual hierarchy. The perfection of the priesthood and the whole of its powers reside in the episcopate; some portion of what bishops possess is communicated to the inferior ranks of the clergy by a special rite for each grade. Thus Orders is one sacrament, but the different ranks of the clergy participate in it in different degrees, or in other words there are several Orders. There are three major or sacred Orders, to which by ecclesiastical law is annexed a solemn vow of chastity, and there are four minor Orders. The sacred Orders are the priesthood, the diaconate, and the subdiaconate; by the minor Orders are ordained acolytes, exorcists, lectors, and doorkeepers.

[1] Trent. sess. xxiii, c. 1.

It is a moot point among theologians whether all these Orders are sacraments or not; more probably only the episcopate, priesthood, and diaconate are sacraments and of immediate divine institution, the rest being of ecclesiastical institution. Those Orders which are sacraments impress a character on the soul.

The first tonsure, by which a lay person is made a cleric, is certainly of ecclesiastical institution and is not a sacrament.

2. The matter of the minor Orders is the handing to the cleric the symbols of the office to which he is ordained, and the words which accompany this act constitute the form. There is a controversy whether the handing to the subdeacon of an empty chalice with the paten alone, or also the giving to him of the book of epistles, is the matter of the subdiaconate, and similarly with regard to the form. It is also a matter of controversy whether the imposition of hands alone is the matter of the diaconate, priesthood, and episcopate, or the handing to the ordinand the symbols of his office, or whether both together constitute the matter. There is the same difference of opinion with regard to the form, but these questions belong to dogmatic theology.

3. In practice, the rite prescribed for ordination in the Pontifical must be observed, and if anything be omitted which even probably belongs to the essence of the sacrament, the whole must be repeated again, at least conditionally. Thus, if in the ordination of a priest the chalice with wine and the paten were not handed to the ordinand to touch while the bishop pronounced the appropriate form of words, the whole ordination would have to be repeated before one thus ordained could be allowed to say Mass. Similarly, if the imposition of hands is omitted which pre-

cedes and accompanies the prayer and preface which are said by the bishop and which contain the form, the whole rite must be repeated. On the contrary, if the third imposition of hands which accompanies the prayer, "Receive the Holy Ghost, etc." is omitted, this portion of the rite alone need be supplied afterward, as it is certain that it only belongs to the integrity of the sacrament, not to its essence.

Although previous reception of the priesthood is more probably necessary for the valid ordination of a bishop, the inferior Orders do not seem necessary for the valid ordination to the priesthood.

Whether three co-consecrators are necessary for the validity of an episcopal consecration is disputed, but at least the Pope can give faculties to have only one consecrating bishop.

The functions of those who are in minor Orders, with the exception of exorcists, may according to modern discipline be exercised by laymen.

## CHAPTER II

### THE MINISTER OF ORDERS

**1.** The ordinary minister of Orders is a bishop, who is the only valid minister of the episcopate and priesthood. A priest may receive delegated authority from the Pope to confer minor Orders, and the subdiaconate, and probably also the diaconate. Thus abbots have power to give minor Orders to their own subjects, and cardinals, if they be priests, may give them to clerics belonging to their titular churches in Rome.

Ecclesiastical law requires that Orders be received only from one's own bishop, or from another bishop with his leave, which is granted by giving the subject dimissorial letters. A person may become the subject of a bishop so as to make him his own and the lawful minister for giving him Orders in five ways:

*a.* By being born in his diocese not by mere accident, but while his parents had a domicil therein.

*b.* By acquiring a domicil in the diocese, or by taking up one's abode in the diocese with the intention of always living there for the future. This intention is proved by actually living in the diocese for ten years, or by transferring thither the greater part of one's goods and living there for some time. The intention of always living in the diocese must also be asserted on oath.

*c.* By having peaceable possession of a benefice in the diocese which is sufficient for one's decent support.

*d.* By a three years' service of the bishop, who within a month after ordination must confer on the ordinand a benefice sufficient for his decent support.

*e.* By incardination in the diocese, done in writing after excardination by one's own bishop according to the decrees of the Sacred Congregation of the Council, July 20, 1898, November 24, 1906.

2. By the common law, regulars must be ordained by the bishop in whose diocese their convent is situated, but some have a special privilege, of giving dimissorials to their members for ordination by any bishop who is in union with the Holy See. Whenever a bishop holds an ordination outside his own diocese he requires the leave of the bishop of the place to exercise pontifical functions.

## CHAPTER III

### THE SUBJECT OF ORDERS

1. To be able to receive Orders validly, the subject must be of the male sex and baptized. It has always been understood in the Church that women can not receive Christian Orders. Moreover, an adult must have at least an habitual and express intention to receive ordination (unless indeed he is an imbecile and has never had the use of reason).

2. Many qualities and conditions are requisite for the lawful reception of Orders about which something must here be said; the fuller treatment of this matter belongs to canon law.

*a.* As we saw when treating of the clerical state, one who aspires to Orders must be of good life and must be called by God. Before receiving sacred Orders he must make the spiritual exercises.

*b.* The ordinand must not be a neophyte or one recently baptized in adult age, nor of evil reputation, nor irregular, nor under censure.

*c.* Before being made a cleric he must have received the sacrament of Confirmation.

*d.* He must have been examined by the competent authority as to whether he has the knowledge required for the Orders which he desires to receive. The Council of Trent prescribed that those to be ordained in minor Orders should know Latin; that subdeacons and deacons should be educated in letters, and should know how to fulfil the duties of their office; that priests should be able to explain the rudiments of the Faith to the people and to administer the sacraments. The First Synod

of Westminster (d. 21) requires that those who are to be promoted to the subdiaconate should be examined in one tractate of theology, those to be promoted to the diaconate in two, to the priesthood in three at least, or in the whole of dogmatic theology.

NOTE. — In the United States there is no such law as is here set down for England, requiring an examination in theology previous to the reception of each of the major Orders. — END OF NOTE.

By a decree of the Sacred Congregation of Bishops and Regulars, November 4, 1892, Religious to be ordained must show testimonial letters that besides the regular course of lower studies they have studied theology for one year before the subdiaconate, for two years before the diaconate, and for three before the priesthood.[1]

*e.* An interval of one year should elapse between minor and sacred Orders, and between each sacred Order, unless for just cause a dispensation is obtained.[2]

*f.* The lower Orders must be received before the higher, and not before the legitimate age. The subdeacon must have entered on his twenty-second year, the deacon on his twenty-third, the priest on his twenty-fifth.

A bishop must have completed his thirtieth year.

*g.* By common law sacred Orders should be conferred during Mass on the Saturdays in Ember Week, or before Passion Sunday, or before Easter Sunday. Minor Orders may be conferred on any feast of precept though suppressed.

[1] The subdiaconate must not now be conferred before the end of the third year of theological studies, the diaconate before the beginning of the fourth year, the priesthood before the middle of the fourth year. C.J.C., can. 976, sec. 2.

[2] The intervals between the subdiaconate, diaconate, and priesthood must now be three months at least. C.J.C., can. 978, sec. 2.

The bishops in missionary countries and some Religious Orders have the privilege of ordaining outside the assigned times and without observing the intervals. Custom in Great Britain and in the United States favors a wide interpretation of this privilege, so that bishops ordain on any convenient day.

NOTE. — The bishops of the United States have two faculties from the Holy See enabling them to dispense in the canonical age for priesthood. One of these is Article 3, Form I: "*Dispensandi super defectu ætatis unius anni ob operariorum penuriam, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*" The other faculty is Article 3, Form C: "*Dispensandi cum diaconis utriusque cleri super defectu ætatis quatuordecim mensium, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*" These two faculties have reference to priesthood only, not to deaconship or subdeaconship. The second faculty is more extensive than the first, since it is applicable to both branches of the clergy, secular and regular (*utriusque cleri*), while the first regards seculars only, according to a declaration of the Holy Office, April 9, 1727. Besides the first faculty enables the bishops to dispense in one year from the canonical age for priesthood; the other, in one year and two months: the first requires for its exercise an urgent need for priests (*ob operariorum penuriam*), while the second does not require this reason. There is a third faculty still more extensive in respect of the age at which priesthood may be received. Some of our bishops have received Form T in place of C, D, and E, and under Article 1 can confer priesthood when the ordinand is only twenty-two years and six months. "*Dispensandi cum*

*quindecim utriusque cleri diaconis suæ jurisdictioni subjectis super defectu ætatis octodecim mensium, ut eo non obstante ad sacrum Presbyteratus ordinem promoveri possint, dummodo idonei sint et nullum aliud eis obstet canonicum impedimentum.*" From this article it may be seen that the number of deacons who can be promoted to priesthood a year and a half below the canonical age is limited to fifteen; hence when this number is exhausted, a renewal of the faculty is to be sought for.—END OF NOTE.

*h.* Those who receive sacred Orders must communicate in the Mass of ordination.

*k.* The Church does not wish her clergy to have to beg or to exercise some unbecoming trade in order to gain a livelihood, so she requires that to be admitted to sacred Orders a cleric must have a title, as it is called, or a certain guarantee of decent support. Various titles are recognized by ecclesiastical law, such as a benefice, pension, patrimony, poverty for Religious, a common table, the Mission, and others. If a cleric already ordained loses the title of his ordination, he may be compelled by the bishop to find another.

*l.* Before ordination regulars must be solemnly professed unless they have a special privilege by which simple profession suffices.

After ordination a priest pays homage to the bishop and solemnly promises obedience to his ordinary. He undertakes no new burden by this promise; he simply binds himself anew to pay canonical obedience to the bishop in all matters subject to his authority; and a secular priest obliges himself not to leave the diocese for which he was ordained without the leave of his bishop.

NOTE. — It is well to distinguish between the faculty which the bishops of the United States have of conferring Orders *extra tempora* without the observance of the interstices, from the custom by which they may go beyond the limits of this faculty. In Article 1 of Form I is the following: "*Conferendi Ordines extra tempora, et non servatis interstitiis usque ad presbyteratum inclusive, si sacerdotum necessitas ibi fuerit.*" By this faculty the bishops may confer sacred Orders on Sundays, feasts of obligation, or on feasts which were once obligatory, but now abrogated; it does not give authority to confer them outside of those days, as was declared by the S. C. of Rites to the bishop of Montreal (May 18, 1883). However, there exists a custom by which the bishops in the United States may confer minor or major Orders on any day of the year which they deem convenient. The lawfulness of this custom is held by eminent authors, such as Kenrick, tr. xx, n. 34; Sabetti, n. 835; Putzer, n. 99; Tanquerey, *De Ordine*, n. 20; nor does there appear to be any author of note who denies its lawfulness. Being a particular legitimate custom it was not set aside by the S. C. of Rites in the response to the bishop of Montreal, nor has it been abrogated by any subsequent decision of the Holy See.

Regarding the interstices or interval of one year prescribed between acolyteship and subdeaconship, between the latter and deaconship, as well as between deaconship and priesthood, the bishops can dispense for a just cause — *non servatis interstitiis*. This power of dispensation does not enable a bishop to confer two of those orders on the same day; for this a special power would be required, or a legitimate custom which does not seem to exist in this country. — END OF NOTE.

# BOOK VIII

## MARRIAGE

### CHAPTER I

#### BETROTHAL

1. The seventh sacrament of the Christian Church is Marriage, and because it is usually preceded by an engagement to marry, we will first treat of betrothal. Betrothal may be defined as a mutual promise of future marriage between persons who may marry lawfully.

It is a mutual promise or a bilateral contract between a man and a woman, and the conditions which are required for the validity of any bilateral contract are requisite for betrothal. There must be a serious, voluntary, and deliberate intention to enter into the agreement. Mere unmeaning flirtation, or the expression of a wish by the man that he could make the woman his wife, do not make a betrothal. Anything which destroys the voluntariness of the act will prevent it from being a valid contract. Substantial mistake about its nature or about the identity of the other party to the contract, and probably even mistake about some unessential quality in the other party, if it were the motive for entering into the contract, would make it null and void. As grave and unjustly caused fear is a diriment impediment to marriage, so, too, it prevents a valid engagement to marry.

The promise must be deliberate, made with full knowledge and advertence to the serious step which is being taken. There must be, as divines say, the deliberateness about the act which is necessary to commit a grave sin. The mutual consent of the parties must be expressed by words, writing, or other suitable sign. The acceptance by a woman of a ring from a man who has asked her to be his wife is a sufficient expression of consent and concludes the contract.

For many years past a special law has existed in Spain by virtue of which no betrothal is valid unless attested by a formal document in writing. In the year 1900 this law was extended to the whole of Spanish America, and by the decree of the Sacred Congregation of the Council, August 2, 1907, no betrothal between Catholics or in which one of the parties is a Catholic is valid or has any canonical effects unless it is contracted in writing and is signed by the parties, and also signed either by the parish priest, or by the local ordinary, or at least by two witnesses. If either of the parties or both of them are unable to write, the fact should be noted in the document, and another witness must be added who will sign the document together with the priest, or the local ordinary, or the two witnesses mentioned above. This decree binds all Catholics throughout the world, and takes effect from Easter Sunday, April 19, 1908.

The term *parish priest* in this decree is used to designate not only him who is lawfully placed in charge of a canonically erected parish, but in countries where there are no canonically erected parishes the priest to whom the cure of souls in a definite district is lawfully entrusted, and who is equivalent to a parish priest, and in missions where as yet the districts are not definitely marked out all priests

who in any place have the general cure of souls assigned them by the superior of the mission.

The parties must be capable of entering into a lawful marriage at any rate at the time contemplated when the engagement is made. For a promise to do something which is impossible or unlawful has no binding force, and so if at the time contemplated there will still be some diriment or prohibitory impediment between the parties, an engagement to marry is void.

A valid contract to marry at a future time when the parties will be free to do so may be entered into by those who are now hindered by some impediment. And so children under age, though incapable of marrying, may enter into a valid betrothal. According to the old canon law, even their parents might make a valid engagement for them, if they were present and did not express dissent; or, if absent, afterward ratified the contract. The decree of August 2, 1907, abolishes this rule, as also the presumption of law by which marriage attempted by children under age was presumed to be a valid engagement to marry.

Some authors applied that presumption to the case of clandestine civil marriages contracted in places subject to the decree *Tametsi* of the Council of Trent. They held that although such a marriage was null and void, yet it had the effects of a betrothal, as in the case of those under age. Leo XIII, however, by a decree dated March 17, 1879, decided that a clandestine marriage has not the effects of a betrothal even if the parties intended that it should have.

Betrothal of children under seven is presumed to be invalid for want of the use of reason, but if it is proved that the parties to the contract had sufficient use of reason

in spite of their tender age, the engagement will be valid; malice is then said to supply for the want of age.

2. Betrothal under condition, as, "I will marry you if I can earn £200 a year," is lawful, and follows *per se* the ordinary rules of conditional contracts. Such a betrothal will impose on the party who enters into it an obligation to do what he can to fulfil the condition, and when the condition is fulfilled the engagement will become valid and binding without any renewal of consent. Similarly, an engagement in this form, "I will marry you if I reach the age of twenty-one," will become a binding engagement on attaining that age. On the contrary, an engagement under an impossible condition is null and void from the commencement. And so, if two parties between whom there is a diriment impediment, which either can not be dispensed or for which a dispensation is not usually given, enter into an engagement under the form, "I will marry you if we can get a dispensation," there will be no valid contract. It is much controverted among canonists and divines whether the same is to be said when the impediment is one for which a dispensation can be, and usually is, granted. If cousins, for example, entered into an engagement under the form, "I will marry you if I can get a dispensation," what would be the effect of such an engagement? There would, of course, be an obligation to ask for a dispensation; but if it were got, would there be a valid betrothal by virtue of the conditional engagement, or would the parties have to renew their consent? Many authors maintain that in this case there is no valid betrothal without a renewal of consent. For proof of their view they point out that the parties were not free to enter on an engagement to marry on account of the diriment impediment between them;

that it is unbecoming to contract on condition that the superior grant a dispensation from the law which should be observed by all; and that when the question has been submitted to Rome, the decision has uniformly been in favor of this view. On the other hand, many good authors hold that there is nothing in these reasons to prohibit us from applying to such cases the ordinary doctrine concerning conditional contracts, and so the general question remains undecided and uncertain. Both opinions are theologically probable.

## CHAPTER II

### THE EFFECTS OF BETROTHAL

1. As BETROTHAL is a contract and the matter is serious the betrothed are under a grave obligation in justice to fulfil their engagement. If a special time was agreed upon, they must keep to the appointed time, otherwise they must marry at a reasonable time after the engagement has been concluded. As grave inconveniences are likely to arise from a too prolonged betrothal, it is the duty of those who have the cure of souls to admonish those engaged that they should marry if without just cause they defer doing so too long. A delay of over a year without good reason seems excessive.

2. After betrothal the parties are under a special obligation to live chastely, and if either commit a sin of impurity with a third person the sin has a special malice on account of his violation of the fidelity which he owes to his betrothed. It is a disputed point whether the circumstance of betrothal changes the species of the sin so that mention of it must be made in confession, or whether it merely aggravates its malice. It is probable that it does not change the species of the sin, for betrothal does not, like marriage, give one party a right in the other, but gives only a right to have the other when the engagement is executed.

3. Betrothal to one prevents valid betrothal to another as long as the former tie lasts, for a promise to do what is

unlawful has no binding force. If, however, in spite of betrothal to one the party marries some one else, the marriage will be valid but illicit, just as the sale of a house to one person is valid in spite of a previous promise to sell it to some one else. Betrothal, in other words, is a prohibitory, not a diriment impediment of marriage with third persons. The Church, however, has made betrothal a diriment impediment of marriage with others related to the betrothed within the first degree of kindred, as with the sister or brother of the betrothed. This impediment has the name of public honesty.[1]

4. The consent of the parents of the parties is certainly not necessary for the validity of marriage. The Council of Trent teaches this.[2] Nor is it necessary *per se* for the lawfulness and the validity of betrothal, because in the choice of a state of life every man is his own master. It does not follow, however, from this doctrine, that children need not consult their parents about marriage and about a partner for life. In a matter of such importance for the future happiness of the child, and because the marriage of a member of the family concerns not merely the individual, but the whole family, and especially the head of it, a dutiful child will ordinarily consult his parents before entering on an engagement to marry. If a child wishes to contract an unsuitable marriage, as if the heir of an honored house wishes to marry an actress of doubtful reputation, the parents have a right to object to such a marriage; and if they forbid it, the son is bound to obey, and he commits sin if he goes against his parents' commands. An engagement contrary to the reasonable commands of one's parents is unlawful and therefore invalid. Mere inequality of rank

[1] According to the new Code public propriety does not arise from betrothal. C.J.C., can. 1078.

[2] Sess. xxiv, c. 1, de ref. Matr.

between the parties of itself is not a sufficient reason why parents should forbid a marriage, but a difficulty arises when inequality of rank will be the cause of dissension and ill feeling in the family. Even in this case a son who wishes to marry some one of inferior rank is not always bound in conscience to submit to the wishes of his parents. If he is satisfied that the woman he loves will make him a good wife, and he is not prepared to take anybody else, he is not bound to sacrifice his own happiness in deference to the wishes of his parents, especially when these originate in social prejudice rather than in a desire for the welfare of their child.

English civil law requires the consent of the father or guardian for the lawfulness of the marriage of a minor. In most of the United States of America the law is similar.

Note. — By common law in the United States marriages of those under seven years of age are void, while those over that age are not void; but if the male and female have not reached the age of fourteen and twelve respectively, the marriage is voidable. The statutes of the different States vary in regard to the age for contracting marriage, but in most of them the violation of the law does not make the marriage void, but voidable.

1. In Kentucky, Louisiana, Massachusetts, New Hampshire, Tennessee, and Virginia, the male can marry at fourteen and the female at twelve.

2. In Iowa, North Carolina, Texas, and Utah male and female can marry at sixteen and fourteen respectively.

3. In Alabama, Arkansas, and Georgia the male and female must be seventeen and fourteen respectively; in Kansas, seventeen and fifteen.

4. In California, Minnesota, New Mexico, Oklahoma, Oregon, South Dakota, and Wisconsin eighteen and fifteen respectively for male and female.

5. The male must be eighteen and the female sixteen in Arizona, Delaware, Idaho, Illinois, Indiana, Michigan, Montana, Nebraska, Nevada, Ohio, Porto Rico, West Virginia, and Wyoming.

6. In Colorado, District of Columbia, Maine, Mississippi, Missouri, New Jersey, Vermont, and Washington the male twenty-one and female eighteen.

7. Only in Connecticut, Florida, Pennsylvania, and Rhode Island must each party be twenty-one.

The remaining States differ from any of those mentioned, none exceeding twenty-one for each sex, and none under fourteen and twelve for male and female respectively. If parties want to get married under the age prescribed by statute, in some States they should have the consent of parents or guardian; in others, this is not required for the validity. In a State where such consent is required, the parties under age may go to a State where no such law exists and there get married, the matrimonial laws not being extra-territorial. When there exist State laws prohibiting persons under the prescribed age to get married without consent of parents or guardians, such laws do not make the marriage invalid, but have a penalty annexed to their violation. It may be interesting to note that every State in the Union, except South Carolina, has some statute regulating the age for marriage. — End of Note.

## CHAPTER III

### DISSOLUTION OF BETROTHAL

1. Betrothal, like other contracts, can be dissolved in various ways. The parties may both agree to release each other and then they will be free, for by a rule of law all things are dissolved by the same causes which gave them birth. But although the betrothal thus ceases to exist, yet the impediment of public honesty, which by ecclesiastical law is the consequence of betrothal, does not cease to bind the parties, and so neither can marry a relation of the other within the first degree without a dispensation. If children under age have been betrothed, they can not release the contract even by mutual consent until the age of puberty, and then within three days either may resile from the contract without waiting for the consent of the other party; but if they do not use this privilege granted by canon law they are presumed to ratify the contract.

2. One of the betrothed may resile if a circumstance of importance be detected or happen which if it had been known before would have prevented the contract being entered into. This rule is commonly admitted by divines, who explain it by saying that betrothal is of its nature conditional, and has such a condition as the above annexed to it. If, then, one of the parties finds that the other has an ungovernable temper, or great debts, or is given to drink, or if the other becomes afflicted with a disease like consump-

tion or paralysis, he will be free to rescind the contract. The innocent party may resile if the other commit fornication with some one else, and certainly the man is free if he find out that the woman was corrupted even before betrothal. The same rule may be applied in favor of the woman when she finds out that the man committed fornication before betrothal, at least if in the particular case it is a sign of inconstancy or is very much resented.

Betrothal is annulled if an impediment of marriage come to exist between the parties unless it had its origin in the culpable fraud of one of them, for then he must do what he can to obtain a dispensation or at least compensate the other, as no one should reap advantage from his own fraud.

3. One who is betrothed may resile in order to enter a Religious Order, or to take sacred Orders, or even with a view of living in the world under a perpetual vow of chastity, for in all these cases a higher life is embraced, and betrothal has also the condition annexed, "Unless afterward I am called to a higher life."

4. The Pope may for just cause grant a dispensation from betrothal. Some authors maintained that the Pope had not the power to grant such a dispensation, inasmuch as it would violate the rights of the other party. However, if an individual is unreasonably obstinate in the maintenance of his rights, the head of the society to which he belongs should have the power of granting relief to others whom that obstinacy places in difficulties. This is what the Pope sometimes does; when a civil marriage contracted in violation of betrothal to another, though null and void in the eyes of the Church, makes it impossible for the married party to return to his former betrothed, the Pope will

grant a dispensation even if the other party refuses to forego his rights.

5. When one of the parties labors under a secret defect which if known would furnish sufficient ground for resiling from the engagement, there is no strict obligation to make it known to the other party, unless it will be to his detriment. Past sin, then, need not be declared, but if the woman has undergone an operation which makes her incapable of bearing children, she should not contract marriage with a man who is ignorant of the defect and hopes to have children.

Whether marriage with a woman contracted in violation of a promise of marriage made to another annuls the former betrothal altogether, or whether the obligation to marry the first is only suspended and revives again if the wife die before the husband, is a disputed question among divines. Of course, such a breach of faith makes the other party free to marry some one else if she choose, and the opinion is at least probable that by such a radical change in circumstances as marriage with another the former engagement is altogether dissolved and can not revive. There is something incongruous in the idea of a person who is married to one, being nevertheless still under the obligation to marry some one else.

6. If a man after betrothal without the knowledge or consent of his betrothed goes to live elsewhere at a distance so that personal intercourse between them is impossible, the woman may consider herself free to break off the engagement. A short absence makes no difference in the mutual obligations of the parties. If it is uncertain with what intention and for how long a time a betrothed person has absented himself, information as to his intentions should be sought by letter before breaking off the

engagement. If a time was fixed for the marriage, the obligation is not extinguished by failure to keep to the time, unless it is certain that the intention of the parties was to break off the engagement if the marriage were not contracted at the appointed time. Presents made to the betrothed in view of marriage are forfeited if the engagement is broken off through the fault of him who made the presents, otherwise, if the fault is on the other side.

If it is certain that there is good cause for breaking off an engagement, this may be done by private authority; it will only be necessary to have recourse to the ecclesiastical judge when the cause is doubtful, or when scandal would arise if the engagement were broken off by private authority on account of the cause being unknown.

7. People who are only engaged to be married have not the rights of married people, and if they attempt to use them they are guilty of sin against the sixth commandment. It is, however, as a rule morally necessary for them to become acquainted with each other, and they are justified in showing to each other those marks of affection which are not wrong in themselves and which are usual in the circumstances. It is to be desired that they should not be much together alone, especially at night, and if they are left alone they should not show greater familiarity toward each other than they do when a mother or sister is with them.

## CHAPTER IV

### BANNS OF MARRIAGE

1. Before publishing the banns of marriage the priest who has the cure of souls must have at least a general knowledge of those who wish to marry. The Ritual prescribes that he should inquire whether there is between them any impediment of kindred or affinity, or any other; whether they wish to marry freely and of their own accord; whether they be of age, and know the rudiments of the Faith so as to be able to teach it to their children.

With regard to people with no fixed abode, strangers, the wives of soldiers, sailors, and others, who are said to have died in foreign parts, the Ritual admonishes the priest not to admit them readily to marriage before making all needful inquiries about them, and referring their case to the bishop, so as to have his leave for the marriage.

2. If no impediment has been discovered by examining the parties, the priest publishes the banns in accordance with the decree of the Council of Trent.[1] "It ordains that for the future before a marriage is contracted the proper parish priest of the contracting parties shall three times announce publicly in the Church, during the solemnization of Mass, on three continuous festival days, between whom marriage is to be celebrated; after which publication of banns, if there be no lawful impediment opposed,

[1] Sess. xxiv, c. 1, de ref. Matr.

the marriage shall be proceeded with, in the face of the Church."

The reasons for this law are: the avoidance of clandestine marriages, so that it being known who are married, there may be less danger of bigamous marriages; the discovery of impediments of marriage; and the protection of the rights of others arising from former betrothal. The banns must be published by the parish priest in the Church of the parish or district where the parties have their domicil or quasi-domicil. If they live in different parishes, the banns must be published in both; and if either or both have recently, within six months, come from another district, the banns must be published there as well. They must be published during the principal Mass on three successive days of obligation; but if by mistake the publication has been omitted at Mass, the omission may be made good in the evening, if there be a considerable concourse of people at the evening service.

3. The very form which is commonly made use of in publishing banns shows that by them the Church intends to impose a serious obligation on all who know of any impediment between the parties who wish to marry to communicate their knowledge to the parish priest. This precept of the Church will bind even when the impediment is matter of a natural or promised secret, for such a secret can not avail against the just commands of a superior. A professional secret binds more strictly, but it does not excuse one who knows it from doing what he can without betraying the secret to procure the removal of the impediment.

4. The obligation of publishing the banns is a serious one, but for good reason the bishop or his vicar-general

may dispense with them either wholly or in part. According to approved theologians, the bishop is even obliged sometimes to dispense with banns, when charity toward his flock requires it. Thus a dispensation should be given when it is probable that otherwise the marriage will be maliciously prevented, when it is a necessary means to preserve the reputation of the parties who are thought to be man and wife already, and when the parties are obliged to depart at once to foreign countries. For lighter reasons the bishop may dispense, but he is not obliged to do so.

A parish priest has no jurisdiction in the external forum, and so he cannot dispense of his own authority from banns. In some special case, however, it might be necessary to marry the parties without delay, and then if there were no time to have recourse to the bishop, a simple priest might declare that under the circumstances the law with regard to banns ceased to be of obligation.

This principle that, when positive law not only ceases to promote the common good but is actually adverse to it, then it no longer binds in the particular case, may sometimes be applied, according to many theologians, even to such impediments of marriage as have their origin in positive law. It might happen that everything was ready for the marriage, that the parties with their friends were already in the church, and then for the first time, whether from confession or in other ways, the priest became aware of a secret and diriment impediment to the marriage of the parties. If the parties know nothing of the impediment, the best way out of the difficulty would be for the priest to say nothing about it, proceed with the ceremony, and afterward apply for a dispensation,

which when obtained he will execute in the manner to be described below. It is probable that in such a case the impediment ceases to bind, but for greater security a dispensation should be asked for and executed. If one of the parties knows of the impediment, but it can not be made known without injury to his reputation, he might be instructed to give his consent in the marriage conditionally on getting a dispensation, which should then be obtained as soon as possible. If the impediment were of its nature public, like that of kindred, and no harm would follow from its being known besides the delay in the marriage, the priest should openly say why the marriage must be put off for a time in order to obtain the necessary dispensation.

The Ritual prescribes that the parties should be diligently instructed how they should live in a pious and Christian way in the state of wedlock. This is done partly in the confessional, partly outside. The parish priest may make a brief discourse to them at the end of the ceremony, or if he prefer he may read to them the instruction which is inserted in the Ritual for the purpose.

## CHAPTER V

### THE MARRIAGE CONTRACT

1. MARRIAGE may be defined as a contract between a man and a woman by which they give each other the right to exercise the acts requisite for the procreation of children, and bind themselves to live indissolubly together. Living in accordance with this contract constitutes the state of marriage.

The primary end of marriage is the procreation of children for the preservation and increase of the race; besides this there are also the secondary ends of mutual society and help, and a lawful outlet for concupiscence. The Fathers and councils mention a threefold good in marriage: that of children, that of mutual fidelity, and that of the sacrament, or an indissoluble and holy union, typified by the union between Christ and His Spouse the Church.

It is the teaching of the Church, defined by the Council of Trent, that marriage between baptized Christians is a sacrament, and so Christ our Lord though he did not institute marriage, yet raised it to the dignity of a sacrament of the New Law, causing the marriage contract to be productive of grace *ex opere operato* whenever it is worthily entered into by baptized Christians. Between these the contract is the sacrament, there is no real distinction between them, and among Christians a marriage can not be valid without being also a sacrament.

2. There are certain technical terms used by theologians to designate different kinds of marriage, and it will be well to give them here.

A valid marriage between non-baptized persons is called *legitimate;* when it is perfected by the use of marital rights it becomes *consummated;* a valid marriage between Christians not yet consummated is said to be a *ratified* marriage.

A *true* marriage is one that has been validly contracted and which can be proved by suitable arguments; a *presumptive* marriage is one presumed by law; a *putative* marriage is one thought to have been validly contracted, but which is really invalid on account of some hidden diriment impediment.

A *canonical* marriage is one celebrated according to the laws of the Church; a *civil* marriage is contracted according to the laws of the State; a *secret* marriage, or a marriage of conscience, is one celebrated without banns by the bishop's leave before the parish priest and witnesses who are bound to secrecy; a *morganatic* marriage is contracted by a person of rank with one of inferior position in life on condition that she and her children are excluded from the rank of the father.

3. Marriage is rooted in human nature; it was instituted by God and raised by Our Lord to the dignity of a Christian sacrament; and so of course it is honorable and its use is lawful. The marital rights, or the *debt* as St. Paul calls it,[1] is the matter of the matrimonial contract, and therefore the right to use marriage is of its essence, and without it marriage can not exist. However, marriage does not necessarily imply the exercise of the

[1] 1 Cor. vii. 3.

right which it gives, any more than the ownership of a house implies the use of it. Our Lady and St. Joseph were really married though Our Lady always remained a virgin.

Although marriage is lawful and honorable, yet all are not commanded to marry. A man may remain a bachelor if he please, and many women remain single without their having the option of being married. The Church, following St. Paul, teaches that the state of celibacy, or virginity, voluntarily chosen in order to render a more whole-hearted service to God, is more perfect than the state of marriage. Our Lord Himself said that there are some who refrain from marriage for the sake of the Kingdom of Heaven, and He added, "He that can take, let him take it." At the same time He said, "All men take not this word, but they to whom it is given."[1] And certainly for some who are strongly inclined by nature to the pleasures of the flesh, or who have fostered their passions by indulgence, the word of St. Paul remains true, "It is better to marry than to be burnt."

4. The efficient cause of marriage, as of all contracts, is the consent of the parties expressed outwardly by sensible signs. That consent must be mutual, referring to the present, not to the future; it must be deliberate and voluntary, and expressed by suitable signs; not only because it is a bilateral contract but also because it is a sacrament, which is essentially an outward sign of invisible grace.

For the validity of the contract any suitable signs by word, or writing, or nods, would suffice. The contract is valid when entered into by proxy, by letter, or by other

[1] Matt. xix. 11.

means of communication between the absent. Ordinarily, for the lawful celebration of marriage the parties must be present with each other, and all must be done in accordance with what is laid down in the Ritual.

Any one, who having entered into the contract of marriage afterward asserted that he had only feigned consent, would not be listened to in the external forum. In the forum of conscience he should be told that he must give a real and internal consent, as that is practically the only way to repair the injury which by his fraud he has inflicted on the other party. If such a case occurred, it would not be necessary to go through the form of marriage again; all that would be required would be for the defaulting party to make good the expression of his consent.

5. Marriage should be contracted absolutely, but if in any particular case it is contracted under condition, we must distinguish various cases to see how the condition will affect its validity.

*a*. A marriage contracted under a condition which has reference to the past or to the present and is verified, as, "I agree to marry you if you are a maid," is valid, but it will not be lawful to use marital rights until it is known whether the condition is verified or not. If the condition is not verified, the contract is invalid.

*b*. An explicit condition against the essence of marriage which has reference to the future makes it null and void for want of true consent to marriage. Thus the conditions, "I marry you if you agree to have no offspring," or, "Until I find a more suitable partner," or, "If you will sell yourself for money," make the marriage null and void; for such conditions destroy the perpetual

and exclusive right, the transference of which is of the essence of the contract of marriage.

*c.* If nothing against the substance of marriage is expressed in the contract, but one or both of the parties intends to do something which is against the essence of marriage, such an intention will vitiate the contract or not, according as it excludes marital rights or only implies a determination to abuse them. Thus if a man intended to have two wives on a footing of perfect equality, he would be married to neither of them; but if he intended really to be married to one and was also bent on keeping a concubine, his marriage with the first would be valid. Similarly, if two were to marry with the intention of living together in virginity, the marriage would be null and void if there was no transference of marital rights; if their intention excluded only the use of marital rights, the marriage would be valid.

The validity of marriage contracted with mutually opposed intentions will depend on which is predominant, or on which would be chosen if their mutually destructive character were known and realized. And so if a baptized person wants to be married but does not want the sacrament of matrimony, he will be married if that is the predominant intention; he will not be married if the intention to exclude the sacrament is predominant.

## CHAPTER VI

### THE MINISTER, MATTER, AND FORM OF MATRIMONY

1. We have seen that according to the teaching of the Church the contract of marriage was raised by Our Lord to the dignity of a sacrament, so that the marriage contract constitutes the sacrament, and as such confers grace on baptized and worthy recipients to enable them to perform the duties of their state of life like true Christians. The efficient cause of the contract is the mutual consent of the parties, who thereby confect the sacrament, and who are, therefore, its ministers to each other. The remote matter would seem to be the marital rights which are the matter of the contract; the proximate matter is the mutual offer, and the form the mutual acceptance of those rights. It is uncertain whether a Christian who by dispensation marries a non-baptized person receives the sacrament or not, as the other party is certainly incapable of receiving a sacrament. It is also disputed whether the marriage of unbaptized persons who are converted to the Faith becomes a sacrament on the reception of Baptism.

2. The civil authority probably has power over the marriages of non-baptized subjects, so that it can make diriment and prohibitory impediments to such marriages for the common good. Christian marriage is a sacrament, and the administration of the sacraments belongs exclusively to the Church, so that the State has no power

to make diriment or prohibitory impediments for Christian marriage. The regulations which the civil authority makes concerning marriages of soldiers and others should, of course, be observed if they are reasonable and just, but they are not impediments in the strict sense. There is nothing to prevent the State from making laws concerning the civil effects of marriage, such as the property rights of married people, rights of inheritance and succession, titles of nobility, and similar matters; these things are within the competence of the State. But questions which affect the bond of marriage, and the capacity of parties to contract marriage, belong exclusively to the Church, and so laws of divorce made by the civil authority are of no validity in the forum of conscience, except in so far as they sanction and apply the laws of the Church.

3. Marriage is a sacrament of the living, and should be received in the state of grace. The priest should endeavor to get the parties to go to confession and communion when they are married, so that they may enter on their new state of life with the blessing of God. The rite in Catholic marriages should be performed in the Church, and if the wife has not received the nuptial blessing before it is the wish of the Church that, whenever the rubrics permit, the Mass *Pro Sponso et Sponsa* should be said, and the nuptial blessing given as therein laid down. This Mass may be said on all days outside close time except on feasts of the first and second class, and on days of obligation. On these days, however, a commemoration may be made of the Mass *Pro Sponso et Sponsa* and the prayers after the *Pater* and communion may be added.

Although the common law of the Church prescribes that the nuptial blessing shall not be given out of Mass, in

England we may follow our Ritual, which says that it should not be omitted even if Mass is not said, until this privilege is specially revoked by competent authority.

NOTE. — From the rubrics of the Roman Ritual and from several decrees of the S. C. of Rites, it is manifest that the nuptial blessing is not to be given except during Mass. Thus that Congregation declared (June 23, 1853), "*Benedictionem nuptialem juxta rubricas non esse impertiendam nisi in Missa.*" Still more recently (June 30, 1896) the same prohibition was repeated. (See Decreta Authentica, n. 3922.) However, an apostolic indult has sometimes been granted, allowing the nuptial blessing to be given outside of Mass. The province of Quebec received this faculty in 1865, and according to our author England possesses a similar privilege. In the United States there is no such indult or legitimate custom.

A question has been proposed, whether there is a strict obligation in the United States of imparting the nuptial blessing (when the rubrics permit) and therefore of having Mass celebrated on the occasion. Some authors hold the strict obligation, though not *sub gravi*. Tanquerey (*De Matrimonio*, n. 47) says: "*Juxta communem sententiam, Missa cum benedictione nuptiali de præcepto est, non de mero consilio, nisi rationabilis causa excusat. Probabilius tamen non obligat sub mortali, ut recte docet St. Alphonsus* (n. 988)." It is difficult at present to hold any obligation of this sort, either *sub gravi* or *sub veniali*. The S. C. of Rites issued a general decree on votive masses (June 30, 1896), declaring: "*Benedictio enim nuptiarum in missali posita, si sponsi eam petierint, (ceterum ad eam non adigendi, bene tamen adhortandi) ab ipsa Missa*

*pro Sponso et Sponsa abstrahi nunquam potest, sed infra eam omnino debet fieri.*" (Cf. Decr. Auth. de Missa pro Sponsis, n. 3922.) From the parenthetical clause of the decree it is clear that parties are not to be compelled on the occasion of their marriage to have Mass along with the nuptial blessing. The Fathers of the Third Plenary Council of Baltimore (n. 125) are indeed very strong and rightly so in urging the pastors to inculcate the practice of having Mass and the nuptial blessing. "*Frequenter et gravibus verbis inculcent pium illum et laudabilem Ecclesiæ ritum, quo fideles non noctu sed Missæ tempore cum benedictione nuptiali contrahant. Qua ratione fidem suam Catholicam tacite profitentur et coram omnibus ostendunt quam alte, ut decet, ac splendide de Matrimonii dignitate ac sanctitate sentiant. Et hoc quidem non solum laude dignum sed fere necessarium videtur nostris hisce temporibus quando nihil intentatum relinquunt religionis hostes, ut matrimonio omnis sanctitatis, omnis sacramenti species, si fieri potest, adimetur et quasi merus contractus civilis æstimetur.* — End of Note.

In England the State does not acknowledge Catholic marriages unless they are celebrated in presence of a registrar and in a building registered for marriages. A priest who solemnized marriage otherwise would be liable to severe punishment as a felon. Due notice of a marriage must also be given to the superintendent registrar of the district or districts in which the parties reside. The marriage can not take place without the registrar's certificate, which can not be granted before the expiration of twenty-one days after the notice has been entered, if the marriage is to be without *license*, or of one day if it is

to be with *license*. These and other laws which the civil authority has imposed on Catholic marriages should be observed in order that the marriages of Catholics may be recognized by the law of the land, and to avoid greater evil. The Nonconformist Marriage Act of 1899 enabled Nonconformists to dispense with the presence of the registrar, but its onerous conditions prevented the Catholic bishops from accepting it.

## CHAPTER VII

### THE PROPERTIES OF MARRIAGE

1. Unity and indissolubility are the properties or peculiar qualities of marriage which we have to discuss in this chapter. Its unity consists in its being a contract in which the parties are necessarily one man and one woman. If several men have one and the same wife at the same time, we have polyandry, which is contrary to the law of nature, for it prevents the natural increase of the human race, makes domestic life almost impossible, and on account of the uncertainty of paternity renders the proper education of the children who are born very difficult. If one man has several wives at the same time, there is polygamy, which is certainly less in keeping with man's nature than monogamy. Polygamy degrades woman, destroys that equality which in regard to marriage rights should exist between the sexes, and makes it difficult for peace and harmony to reign in the family. It is certainly against the positive divine law, promulgated anew by Christ our Lord, and obligatory on all men after the preaching of the Gospel. The Council of Trent anathematized him who should say that it is lawful for Christians to have several wives and that this is not forbidden by divine law.[1]

2. Marriage is also indissoluble, at least by divine law, so that no human power can dissolve a marriage once

[1] Sess. xxiv, c. 2.

validly contracted; "What God hath joined together let no man put asunder." [1] This text has the strictest application to the consummated marriage of baptized Christians which can only be dissolved by divine authority. The Pope can for a grave reason dispense in the ratified but not consummated marriage of a Christian; ratified marriage is also dissolved by religious profession of solemn vows; and there is the case of the Pauline privilege.

*a.* The Pope not unfrequently uses the power given to him by Our Lord to dissolve the merely ratified marriage of Catholics for some grave reason. A probable suspicion of impotence in one of the parties, and a serious quarrel which leaves no hope of reconciliation, have been held sufficient causes for granting a dispensation from a ratified marriage. As the Pope has no jurisdiction over non-baptized persons, he can not exercise his authority to dissolve their marriages. But if a non-baptized married couple were converted to the Faith, the Pope would have power to dissolve their marriage if it had not been consummated after Baptism, for even if it had been consummated before Baptism it would only rank as a ratified marriage. By authority of the Holy See a baptized pagan who had several wives is sometimes permitted to keep any one of them who may be converted with him, if the first is unwilling to become a Christian. Similarly, a married pagan converted in circumstances which render it impossible to interpellate the other party is sometimes allowed by Papal dispensation to contract another marriage with a Catholic.

*b.* Solemn profession in a Religious Order with solemn vows annuls a previously existing ratified marriage by

[1] Matt. xix. 6.

ecclesiastical law. Mere entrance into religion and even profession of simple vows in Orders that have solemn vows is not sufficient. By ecclesiastical law a period of two months is granted after marriage, during which there is no obligation to render the debt, in order that either of the parties may use his privilege of entering religion.

*c.* The consummated marriage of two pagans may be dissolved by the Pauline privilege if one of them is converted to the Faith, and the other will neither be converted nor live at peace without trying to draw the convert to sin. It is in this sense that the Church interprets the words of St. Paul: "But if the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases. But God hath called us in peace." [1]

The marriage is not dissolved by the Baptism of one of the parties, but if the conditions mentioned above are verified the convert after Baptism may contract a second marriage with a Christian, and by this marriage the former is dissolved. In order that it may be known whether the other party is willing to be converted or at least to live at peace with the convert, he must be interpellated by the bishop or by his authority. Both interpellations are required, and more probably they are necessary for the validity of the second marriage, unless a dispensation from them is obtained from the Holy See. Thus in a case of insanity of the other party, a dispensation from the interpellations was granted, and in countries where Christians were forbidden to live with Jews, only one interpellation was put, "Whether the other party was willing to be converted to the Faith," and if a negative answer was given, the convert was free to marry again.

[1] 1 Cor. vii. 15.

3. Although the marriage bond is in general indissoluble according to Catholic teaching, yet for good cause married people may separate either perpetually or at any rate for a time. They may do this by mutual consent if there is no danger of incontinence, in order to lead a more perfect life in religion or sacred Orders; and for a time for less serious reasons, as for the sake of trade or travel. Serious danger to body or soul from brutal violence or infectious disease like syphilis, or from heresy or apostasy committed after marriage, is sufficient to justify separation as long as the danger lasts. Finally, the innocent party may separate from the other on account of adultery, perfect, consummated, and not condoned explicitly or implicitly by rendering marital rights after knowledge of the crime. Our Lord Himself permits separation for this breach of the marriage compact, and if the crime is certain and notorious the separation may be effected by private authority. In case of doubt or when there is danger of scandal because the adultery is secret, the authority of the ecclesiastical judge should be invoked. Separation is allowed to the innocent party; it is not of obligation, and as a rule the confessor will do well to try his best to bring about forgiveness and reconciliation. If both parties commit adultery, there is mutual compensation and neither has the right to separate from the other.

4. Although questions concerning divorce and the separation of married people belong of right to the ecclesiastical court, in most modern States the civil authority claims and exercises jurisdiction in these matters. May Catholics take their marriage cases to the civil courts, and may Catholic judges and Catholic lawyers lend their aid in deciding them? No answer can be given to these

questions which will apply to all countries and circumstances. In some countries Catholics can still have their rights safeguarded by recurring to the ecclesiastical courts, and there is no reason why they should carry their matrimonial suits to the civil tribunals. In England and in the United States the Church tacitly or explicitly permits Catholics to apply to the civil courts at least for a judicial separation. Before doing so they should put their case before the ecclesiastical authorities, and this is prescribed under liability to penalties by the Third Plenary Council of Baltimore.[1]

Note. — The portion of the decree here referred to is as follows: "*Iis omnibus, qui matrimonio conjuncti sunt, præcipimus, ne inconsulta auctoritate ecclesiastica, tribunalia civilia adeant ad obtinendam separationem a thoro et mensa. Quod si quis attentaverit, sciat se gravem reatum incurrere et pro Episcopi judicio puniendum esse.*" What is precisely meant by the clause, *inconsulta auctoritate ecclesiastica,* is not quite evident. Does it signify that before suing for a judicial separation in the civil court a person is required to consult the bishop or would he sufficiently comply with the tenor of this clause by consulting his own pastor? It is certain that pastors have not, strictly speaking, from their office any authority *in foro externo* regarding matrimonial cases, these being reserved to the ordinary; and therefore it might seem insufficient to refer such a question to the pastor alone. On the other hand, a bishop might delegate a pastor as judge of the sufficiency of cause of a parishioner for seeking a separation, so that the latter after receiving a favorable

[1] n. 126; S.O. December 19, 1860.

opinion might licitly apply to the divorce court. Perhaps it may be held that the ecclesiastical authority required to be consulted according to the decree was not intended to be confined to the bishop or to a priest specially delegated by him, but may be understood of any pastor or assistant regarding his parishioners without any special delegation by the bishop. It would appear that the term *ecclesiastical authority,* may fairly be interpreted in the wider sense, so long as the bishop does not reserve to himself the power of giving permission to apply to the divorce court. Practically a priest, pastor, or assistant is justified in following the recognized usage of his diocese in this matter, since such usage implies episcopal sanction. The writer of this note once had occasion to refer to the bishop a person who for good reason wanted to procure a legal separation from her husband. It was the opinion of the bishop expressed on that occasion that the priest could have given the permission without reference to the ordinary. To-day, when the number of divorce suits is largely on the increase, it would be difficult for the bishop to judge personally or through his matrimonial court all the cases of the kind which might be presented. Hence perhaps many of the bishops are content, as in the instance given, to leave the decision to the pastor or assistant.— End of Note.

With regard to divorce cases, Catholics in England and in the United States may have recourse to the civil courts in order to obtain a declaration of nullity when a marriage has already been declared invalid or annulled by the ecclesiastical authorities. They may not go to the civil courts in order to obtain dissolution of

a valid marriage with the intention of marrying again. This is obvious from what has been said above. There is a difficulty as to whether a Catholic may petition for a divorce in the civil courts, not with the intention of considering the marriage dissolved and marrying again, but in order to obtain the civil advantages annexed to divorce, such as a change of marriage settlements or release from the obligation of supporting his wife's child by another man. The question is disputed among theologians, but as the law in English-speaking countries does not express hostility to religion and does not affect to touch the conscience but only the external relations of the citizens, the better opinion is that Catholics for good cause may petition even for divorce in the civil courts, with the intention of using only the civil advantages that follow from it. A consequence of this is that Catholic lawyers and judges may for grave reasons undertake these cases in the civil courts. For greater safety and to show their submission to the Church they should ask the leave of the bishop.

## CHAPTER VIII

### THE IMPEDIMENTS OF MARRIAGE IN GENERAL

1. The impediments of marriage are certain conditions or circumstances which prevent marriage between the persons whom they affect. Some have their origin in natural and divine law, as the impediment of previous marriage, which as long as it lasts prevents a second marriage; others have their origin in ecclesiastical law, like that of public decency. Some prevent marriage being lawfully contracted and are called prohibitory, though a marriage contracted in spite of them is valid; others are diriment impediments and where they exist prevent marriage being validly contracted; but if they arise after marriage has already been contracted they can not make it null and void.

Diriment impediments are, in general, annulling laws which for the common good make the parties affected incapable of contracting a valid marriage, and render the act null and void if marriage is attempted in spite of them. Such laws remain in force in spite of ignorance or fear, and so as a general rule a marriage contracted in ignorance of a diriment impediment which exists between the parties is null and void in spite of the ignorance. In the same way private inconvenience does not make a diriment impediment cease to bind, but if the law can not be observed without causing public harm and inconvenience, then it

ceases to be of obligation. Thus, if illness prevents one of the parties from going to be married in the Church on the day appointed, he is not justified in contracting marriage privately at home; but if all the priests of a country are driven out, as were those of France in the Revolution, marriage may be contracted without the presence of the parish priest.

2. The impediments of natural and divine law bind all men, whether infidels or Christians, and so a marriage between parent and child is always and everywhere null and void. The civil authority more probably has power to make impediments of marriage which will bind its non-baptized subjects, but the Church alone has power to make impediments for Christians who have been baptized.[1] All baptized persons, whether Catholics or heretics or schismatics, are subject to the diriment impediments of marriage unless they have been specially exempted from them. For all who are baptized thereby become members of the Church of Christ and subject to the jurisdiction of the divinely constituted head of that Church. The Supreme Pontiff, then, has power to bind all who are baptized by those impediments of marriage which are of ecclesiastical origin. Neither the practice of Rome nor the express declarations of the Popes afford any ground for the opinion that it is not the Church's intention to bind heretics and schismatics by the diriment impediments of marriage. Especially since the time of Benedict XIV many cases have been decided of marriage contracted between non-Catholics being declared null and void on account of some impediment of ecclesiastical origin. The general principle is clearly stated in the answer of the Sacred Congregation of

[1] Leo XIII Encyc. *Arcanum*, February 10, 1880.

the Council to the bishop of Rosenau, August 20, 1780. "But, you say, because heretics in Hungary marry among themselves even within the prohibited degrees in virtue only of royal permission, I may well be asked what is to be said about the validity of such marriages. The answer is that unless a lawful dispensation of the Church by whose authority those impediments were introduced is obtained for them, the declaration of Benedict XIV clearly decides that those marriages are invalid. For it lays down that in Holland marriages between heretics are to be held as valid, even though the form prescribed by the Council of Trent was not observed in solemnizing them, provided that no other canonical impediment stood in the way; and this exception shows clearly that if there be any other canonical impediment, such as exists within the forbidden degrees of kindred, those marriages are not valid."

According to the common opinion, then, marriages contracted by baptized heretics and schismatics, when there is a diriment impediment of ecclesiastical origin between the parties, are invalid, though the impediment may not be recognized in the sect to which they belong. Such marriages, however, inasmuch as they are contracted in good faith, are putative, and the children are legitimate.

## CHAPTER IX

### THE PROHIBITORY IMPEDIMENTS

THERE are four prohibitory impediments of marriage according to modern ecclesiastical law: the prohibition of the Church, close time, betrothal, and simple vows. Something must be said on each of these.

1. The impediment called the Church's prohibition is either special or general. A special prohibition of marriage is issued by the parish priest, or the bishop, or the Pope, when it has been found out that the proposed marriage will violate the rights of a third party, or when a well-founded suspicion arises that there is some impediment between the parties. By a general prohibition is understood a law of the Church which forbids marriage in the circumstances but does not make it null and void if in spite of the prohibition it is contracted. Thus the Church forbids marriage without banns; it forbids clandestine and mixed marriages. We have already treated of the law concerning banns, and it will be more convenient to treat of mixed marriages under the diriment impediment of disparity of worship. Clandestinity, or marriage without the presence of the parish priest and witnesses, is also a diriment impediment, to be treated of below, in places where the decree *Tametsi* of the Council of Trent has been published. In Great Britain and in the greater part of the United States of America the decree *Tametsi* was never published, but clandestinity is now a diriment impediment of marriage in Great Britain and in the United States, as well

as throughout the Western Church, by virtue of the decree *Ne temere*, August 2, 1907.

2. During close time, or the periods between the first Sunday of Advent and the Epiphany, and from Ash Wednesday to Low Sunday, the solemnization of marriage is forbidden by the common law of the Church.[1] The solemnization of marriage consists especially of the Mass *Pro Sponso et Sponsa*, the nuptial blessing, and outward pomp and feasting in connection with the marriage. A simple and private marriage without these solemnities during close time is not against the common law, but in many dioceses even such a marriage is forbidden by custom or diocesan law without leave of the bishop.

3. Betrothal between two persons prevents the parties from lawfully marrying any third party unless the betrothal is legitimately broken off. In other words, betrothal is a prohibitory impediment of marriage with any other person than the betrothed, as we saw above.

4. There are several simple vows which are so many prohibitory impediments of marriage.

A vow of chastity hinders marriage, for he who has taken such a vow exposes himself to the danger of violating it if he marries, or of depriving the other party of his marital rights. Even after marriage has been contracted the obligation of the vow remains, unless a dispensation is obtained or the obligation of the vow is indirectly annulled by the other party.

By a vow of virginity he who takes the vow promises God that he will not commit a consummated sin against chastity. He will sin, therefore, by marrying, because he

[1] Close times for marriage now are: from the first Sunday of Advent till Christmas Day inclusive, and from Ash Wednesday till Easter Sunday inclusive. C.J.C., can. 1108, sec. 2.

exposes himself to the danger of breaking his vow or of defrauding the other party of his rights. If by a consummated sin against chastity his virginity has been destroyed, the vow can no longer be observed, and ceases.

The same rules hold with regard to a vow of celibacy which is violated by marriage, but after marriage has been contracted no further obligation remains.

Chastity, virginity, and celibacy are loosely used one for the other, and if a case arose in the confessional the intention of the penitent would have to be inquired into in order to discover what obligation he wished to take upon himself by his vow.

One who has vowed to receive sacred Orders would commit sin by marrying, for by marriage the other party obtains rights which are incompatible with the observance of the vow. He is bound to ask the other party's leave to receive Orders, and if it is refused he may use his marriage rights. The obligation of the vow will then ordinarily cease as being impossible of fulfilment, though *per se* it is only suspended, and revives on the death of the other party, or in case of his loss of marital rights.

Similarly, one who has taken a vow to enter religion commits sin by marrying, as he makes the observance of his vow difficult or impossible. Before consummating marriage he is still bound by his vow if it bound him to enter a Religious Order in the strict sense. After marriage has been consummated he may use his marital rights, and the vow usually ceases on account of impossibility of observance.

5. The power of dispensing from the impediments of clandestinity, solemnization of marriage during close time,

the vow of entering religion with solemn vows, and the proof of *liber status* when it is not altogether certain, is reserved to the Holy See. By the common law a dispensation from the impediment arising from a vow of perpetual and perfect chastity, and from mixed marriage, can only be obtained from the Holy See, but in England and in the United States the bishops have authority to dispense from both by virtue of special faculties.

Bishops can also dispense in banns, and in vows that hinder marriage and are not reserved to the Pope. Regular and secular confessors have specially delegated faculties for dispensing in vows that are not reserved.

NOTE. — In the United States the bishops have in Article 4, Form I, the faculty "*Dispensandi et commutandi vota simplicia in alia pia opera, et dispensandi ex rationabili causa in votis simplicibus castitatis et religionis.*" By this faculty the bishops have power to dispense in vows, even in those that are set down as reserved to the Sovereign Pontiff, such as the vow of perpetual chastity and the vow of entering a Religious Order with solemn vows. They are not, however, empowered to dispense from the three religious vows taken in an Order or congregation whose institute has been approved by the Holy See; but the bishop can dispense in those vows when the institute is not so approved. The bishops are accustomed to communicate the faculty of Article 4 in an ample manner. The only restriction in the archdiocese of St. Louis is: "*Exceptis tamen iis (votis) quæ emittuntur in societatibus religiosis sive virorum sive mulierum in Nostra Diocesi existentibus.*" The reader will find in Putzer's "Commentary on the Apostolic Faculties" a detailed explanation of the extent of the faculty

in Article 4, as well as of the manner in which according to the practice of the Holy See it ought to be exercised. (n. 106–110.) — End of Note.

# CHAPTER X

## THE DIRIMENT IMPEDIMENTS

### Article I

### *Impotence*

1. IMPOTENCE is the incapacity to have carnal intercourse such as is required for the procreation of children. It is *absolute* if the incapacity extends to all persons of the other sex, otherwise it is *relative*. *Temporary* impotence exists only for a time and may be cured by lapse of time or by some lawful operation which does not endanger life; *perpetual* impotence lasts for life. It is *antecedent* if it precedes marriage, otherwise it is *subsequent*.

2. Antecedent and perpetual impotence annuls marriage by the law of nature, for the matter of the marriage contract is in that case impossible. This is true whether the impotence be absolute or only relative, but in the former case marriage is out of the question, while in the latter a valid marriage may be contracted with some one else, though it is impossible with a person with respect to whom the party is impotent. Subsequent impotence, which has supervened on marriage, can not, of course, annul the marriage already contracted, but if it is altogether certain it makes the use of marriage unlawful.

This, however, is not to be lightly presumed, for the right

is in possession, and for its lawful exercise it suffices if there be any probability of its not being impossible.

Neither does antecedent but temporary impotence annul marriage, for a contract is valid if the matter is possible or by using ordinary means can be made possible.

When it is doubtful whether a spouse is impotent or not the decision must be in favor of the validity of the marriage, and since all such questions belong to the *forum externum*, they fall under the cognizance of the bishop, nor can they be settled by the confessor.

3. Mere barrenness or sterility is not impotence, nor does it make marriage impossible or unlawful. There is a controversy among experts as to whether removal of the ovaries or of the womb or of both organs makes a woman impotent or only sterile. The decisions which have been given by the Roman Congregations in particular cases are quoted in defence of both opinions, and as yet no general solution of the question has been given. Until this happens, a woman who has undergone such operations should not marry without consulting the bishop, but if she is already married the more favorable opinion should be followed. This impediment is recognized by English law.

Note. — Impotence is also recognized by the civil law of the United States. Keezer, in his "Treatise on the Law of Marriage and Divorce," published in 1906, says (n. 12), "Incurable impotency at the time of the marriage and existing at the time of filing the libel is a ground for annulment." Again (in n. 160) we find the following: "The incapacity of either party to consummate the marriage, by reason of a defect of physical organization or infirmity, is a cause of divorce from the bonds of matrimony. And by

the laws of some States, such a cause, existing at the time of the marriage, renders the contract voidable, and it may be declared *ab initio* by a sentence of nullity." In n. 164 the same writer says, "The impotency must exist at the time of the marriage and be incurable in order to constitute a ground for divorce or annulment." From these extracts one may observe an agreement between the civil law in this country and the natural law regarding this impediment. Many States have passed laws regulating the time within which actions for annulment of marriage on the ground of impotence should be instituted. Regarding ecclesiastical trials for impotence the reader may consult Smith's "Marriage Process" (n. 182–195). — END OF NOTE.

**Article II**

*Age*

Males under fourteen years of age and females under twelve are presumed to be physically incapable of procreating children and not to have that maturity of judgment which is requisite for entering the married state.[1] The Church has made them incapable of marrying by requiring the age of fourteen complete in males and twelve complete in females for the validity of marriage, unless, according to the legal phrase, malice supplies for age. This means that if it is proved to the satisfaction of the bishop that one who has not yet reached the age of puberty, as it is called, is nevertheless physically capable of procreating children, he may contract a valid marriage. The age of puberty varies according to race and climate; in northern latitudes it is not reached till the age of about fifteen in girls and seventeen or eighteen in boys. Even though the parties

[1] According to the new Code, a man before he has completed his sixteenth year, and a woman before she has completed her fourteenth year, can not contract a valid marriage. C.J.C., can. 1067, sec. 1.

may not yet be capable of having children, they may marry validly if they are of the age required by the Church, though it is desirable not to marry before full maturity. Those who are not baptized are not subject to the ecclesiastical impediment of age, but in this matter English law agrees with canon law.

### Article III

*Previous Marriage*

1. One who is already married can not validly contract a second marriage unless the former bond is dissolved by one of the means described above, or by the death of the other spouse. Previous marriage, then, is a diriment impediment of a second marriage as long as it subsists, by the law of nature and by positive divine law. This impediment, therefore, binds all men, whether Christian or heathen.

It is not lawful for one who has been married before to contract a second marriage, unless there is certain proof that the first marriage has been dissolved by lawful authority or by the death of the former spouse.

If the decease is proved by a certificate of death or some similar authentic document, or by two witnesses who are above suspicion, or by any other legitimate means, the parish priest may allow the second marriage. If, however, there is no certain proof to be had, and it is doubtful whether the party in question is free to marry, the case must be referred to the bishop, who will investigate the circumstances, and if any prudent doubt remain he will not allow the second marriage without consulting the Holy See. Sometimes in special circumstances the Pope allows a second marriage, even when strict proof of the death of the former spouse is not obtainable, as he did in the case of

the wives of the Italian soldiers who perished in the battle of Adoua.[1]

2. If a person has unlawfully contracted a second marriage without the necessary certainty concerning the death of a former spouse, it does not follow that the second marriage is invalid, and that the parties must separate. If there is only slight doubt about the death of the former spouse, after making fruitless inquiries, the parties may live together as man and wife. If only one of the parties is in bad faith and is not certain of the death of a former spouse, while the other knows nothing of the difficulty, he should render the marriage debt, but he has no right to ask it as long as he remains in bad faith. If both parties are in bad faith, they can not lawfully use marriage as long as they are in that state. Inquiries should be made, and if probable reasons can be discovered for thinking that the former partner is dead, they may use marriage, according to a probable opinion. For even in this case the marriage has been contracted, it is probably valid, and it is not certain that any one else has a prior right, so the parties should be allowed to use it. If the second marriage was contracted in good faith, and a doubt about the death of a former spouse arises subsequently, inquiries should be made, and if they are fruitless the parties may live as man and wife. Of course, in all cases when it is found out for certain that a former spouse is alive, the second marriage is invalid, and the parties must separate, or at any rate must not live as man and wife together.

English law enforces this impediment, but if a former spouse has not been heard of for seven years or more, it will not punish the other party as guilty of bigamy if he

[1] S.O. July 20, 1898.

marries a second time, although he must separate if the former spouse appear subsequently.

NOTE. — Generally, according to United States law, a second marriage is invalid unless the first has been dissolved by death, or by a valid decree of divorce, and the dissolution takes place before the second marriage. Hence bigamy is committed if a person legally married marries another during the life of his or her consort, not having procured a divorce. Many States have made laws so that if the husband or wife be absent for a period of years and be unheard of during that time, the other party marrying again will not be liable to prosecution for bigamy; also, when husband or wife by a former marriage has been sentenced to imprisonment in the penitentiary for life, the other party will not be prosecuted for marrying again. —END OF NOTE.

### Article IV

*Consanguinity*

1. Consanguinity is the bond of relationship by blood existing between those who are descended by carnal generation from one and the same near stock. The relationship, therefore, arises from community of blood derived from a common and not too remote ancestor. That common ancestor is called the *stock;* the distance in descent between one person and the other is called the *degree* of relationship; and the series of persons who descend from the same stock is called the *line,* which is *direct* if they descend from one another, otherwise it is *collateral.* The degrees are equal in the collateral line if the persons are equally distant from the common stock; otherwise they are unequal.

It is immaterial whether both parents of the common

stock are the same or only one, and whether the birth be legitimate or not.

The method of computing the degrees differs somewhat in canon law from that adopted by modern English civil law, which here follows the Roman civil law. The following are the rules for reckoning the degree of relationship according to canon law which is followed in moral theology:

*a.* To find the degree of relationship in the direct line, count the persons, leaving out the common stock.

*b.* In the collateral line, when the degrees are equal, count the persons in one of the lines of descent, leaving out the common stock.

*c.* When the degrees are unequal, count the longer line, leaving out the common stock in the same way, and add the number of persons in the shorter line. Thus, an uncle and niece are related in the second degree, touching the first, or mixed with the first.

According to the English method of computation, which is also followed in most States of the Union, all the persons are counted both in the direct and collateral lines, leaving out the common stock. According to this method, an uncle and niece are in the third degree.

Consanguinity in the first degree of the direct line annuls marriage by the natural law; and in further degrees indefinitely, but more probably only by ecclesiastical law. In the collateral line it is disputed whether consanguinity in the first degree annuls marriage by the law of nature or not; it certainly does so to the fourth degree by ecclesiastical law.[1, 2]

This impediment, therefore, is partly of natural, partly of ecclesiastical law, and although in the more remote degrees of both the direct and collateral line

[1] Council of Lat. 4 (1215). [2] Consanguinity annuls marriage by the new Code to the third degree in the collateral line. C.J.C., can. 1076, sec. 2.

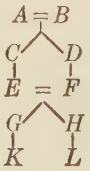
it does not bind those who are not baptized, yet even among them there is a natural bond in blood relationship which after Baptism becomes a diriment impediment of marriage within the prohibited degrees. One who is baptized is subject to the laws of the Church, and can not, without the necessary dispensation, marry a relation within the forbidden degrees, even if the latter is not baptized.

English law follows in this matter that of Leviticus, and according to its method of computation consanguinity is a diriment impediment of marriage to the third degree inclusive, but not beyond. Thus an uncle can not marry a niece, but two cousins may marry, by English law.

Note. — The United States law regarding the impediment of consanguinity follows somewhat the English law. But in some States first cousins are forbidden to marry. This is so in the following States: Arizona, Arkansas, Colorado, Illinois, Kansas, Michigan, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, and Wyoming. There are a few States, such as Indiana and Washington, which prohibit marriage to those who are more closely related by blood than second cousins. (See Schouler's "Domestic Relations," sec. 16.) — End of Note.

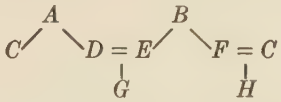
2. The impediment of consanguinity may be multiple from various causes.

*a.* If two near relations marry, their offspring will be related in several different ways:



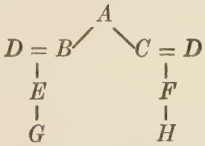
In this scheme $K$ and $L$ are cousins descended from the common stock $E=F$, and so they are in the second degree in the collateral line. Both $K$ and $L$ are also descended from $A=B$ through $E$ and through $F$. On this account they are in double fourth degree of relationship. Thus there is a threefold relationship between them, and if a dispensation were required for $K$ to marry $L$, mention should be made of this fact.

*b.* Similar results will follow if two relatives marry two relatives:




In this scheme $G$ and $H$ are descended from both $A$ and $B$, and they are in double second degree of relationship.

*c.* Similarly, if one man successively marries two who are related to each other:




$G$ and $H$ are in the second degree from the common stock $D$, and in the third from the common stock $A$. $D$ is supposed to marry his deceased wife's sister.

## Article V

### *Affinity*

1. Affinity is the relationship which one contracts with the relatives by blood of a person with whom he has carnal intercourse. For by complete carnal intercourse the parties become "one flesh" and the blood relatives of one become related to the other.[1]

[1] As defined by the new Code affinity arises from valid marriage, whether consummated or not. C.J.C., can. 97.

It has its origin in positive ecclesiastical law with regard to the collateral line and more probably also in the direct line. It may arise from lawful carnal intercourse in marriage, and then it extends to the fourth degree, or from unlawful intercourse, and in that case the Council of Trent restricted it to the first and second degree.[1] The degrees in affinity with the husband are the same as the degrees of consanguinity with the wife and *vice versa*.

2. Although the impediment of affinity has its origin in ecclesiastical law and therefore it does not bind those who are not baptized, yet a certain natural bond corresponding in some sense with affinity arises from carnal intercourse even among the non-baptized. If a non-baptized person is received into the Church, this natural bond becomes the impediment of affinity, so that a pagan who had a pagan wife and who is converted to the Faith can not without dispensation marry any of the relations of his dead wife within the fourth degree.

As this impediment is of ecclesiastical origin, the Church can dispense from it, but she does not dispense in affinity in the first degree in the direct line arising from lawful carnal intercourse, and but seldom in the same degree when it arises from unlawful intercourse, and then the following clause is inserted in the dispensation, "Provided that the woman was born before the unlawful intercourse took place." In this way the danger of sanctioning a marriage between parent and child is prevented.

Affinity may be multiplied like consanguinity by having carnal intercourse with several who are related to each other. A man who commits sin with three sisters contracts a double affinity with each, and can marry none of them without dispensation. Affinity, however, does not

[1] By the new Code affinity annuls marriage to the second collateral degree inclusively. C.J.C., can. 1077, sec. 1.

generate affinity, so that two brothers may marry two sisters, and a father and son may marry a mother and daughter.

3. A man who sins with the relatives of his wife in the first or second degree contracts affinity with his wife. This can not, of course, annul his marriage, but by ecclesiastical law it deprives him of the right to ask for the marriage debt until he is dispensed; but his wife may ask, as she is not to be punished for his sin. This is a penal law, and the penalty is not incurred by one who sinned in ignorance of it, or under compulsion. Confessors usually have power to grant the necessary dispensation.

English law only acknowledges affinity arising from lawful intercourse between those who are married, and it extends only to the same degrees, computed in the same way, as does consanguinity.

NOTE. — There is a considerable number of States where affinity is not recognized by civil law as an impediment of marriage, such as Arizona, Arkansas, California, Colorado, Florida, Idaho, and Illinois. — END OF NOTE.

### Article VI

*Spiritual Relationship*

1. Spiritual relationship arises by ecclesiastical law from the administration of Baptism and Confirmation. According to modern discipline, it annuls marriage between the minister of the sacrament and the recipient and his parents, and also between the sponsors and the recipient and his parents. As it has its origin in ecclesiastical law, it does not affect those who are not baptized, and the impediment is doubtful and consequently non-existent when Baptism is doubtful or only probable. The impediment does not arise if Baptism

was administered privately without sponsors and afterward the ceremonies with sponsors are supplied in the Church.

There is a twofold impediment if the same person is sponsor both in Baptism and Confirmation, but there is only one although the same person is sponsor in Baptism or in Confirmation for several children of the same parents.[1]

## Article VII

### *Adoption*

By adoption a person becomes in law the child of another, though he is not such by nature. Legal adoption, according to Roman law, was a diriment impediment of marriage between certain parties, and in this matter the civil law has been *canonized* by the law of the Church. It binds only those who are baptized in as far as it is an ecclesiastical impediment of marriage, and only in three respects:

*a.* It annuls marriage between the adopter and the adopted and those descendants of the latter who are under his authority at the time of the adoption.

*b.* It annuls marriage between the adopted and the children of the adopter as long as they are under his authority.

*c.* Finally, it annuls marriage between the adopter and the widow of the adopted, and between the adopted and the widow of the adopter.

Roman law, as such, is nowhere in force at present, but wherever the law of the country makes provision for adoption so that in essentials it resembles in this point the Roman civil law, the Church *canonizes* it, and therefore adoption is a diriment impediment of marriage between the parties mentioned above. In England adoption exists

[1] S.O. April 29, 1894.

as a private contract between the parties, but it is not otherwise recognized by law, and so in England there is no room for the impediment of marriage arising from legal adoption. In most of the States of the Union there seems to be a form of adoption recognized by law sufficient to make it the basis of the ecclesiastical impediment.[1]

NOTE. — Some of the most eminent theologians of the United States, *e.g.*, Kenrick and Sabetti, held that the canonical impediment of legal relationship or adoption had no existence here. Their argument was that in this country there existed no perfect adoption from which alone this impediment arises. The opinion can scarcely be maintained any longer, for there are some States in which at present adoption, perfect in essentials, exists by statute law; and this is sufficient for the canonical impediment. There is a declaration of the Holy See called "*Instructio Austriaca*," from which it is evident that, if the adoption be such as to correspond in essentials to the perfect adoption of the Roman Law, there exists a diriment impediment. In n. 28 of that Instruction it is said: "*Adoptio, qualis arrogationi seu adoptioni perfectæ juris Romani quoad essentialia respondet, secundum nunc vigentem Ecclesiæ praxim, matrimonium dirimit.*" Cases may easily occur in which it may be doubted whether the requisites of perfect adoption are present, when there is a statute prescribing certain formalities. In such cases, the safer method is to apply to the Holy See with a description of the State law on adoption and of the particular facts in each case. It is deserving of notice that the bishops in the United States have no faculty to enable them to dispense in this impediment, and consequently, if a dispensation is to be sought, recourse must be

[1] Smith, Marriage Process, n. 263.

had to the Holy See. Some States, such as California, Iowa, Missouri, and Vermont, prescribe for adoption a written instrument only, duly executed and recorded; while others, like Massachusetts, Pennsylvania, and Wisconsin, require a judicial decree. — END OF NOTE.

### Article VIII

*Public Propriety*

The impediment of public propriety arises by ecclesiastical law from valid and certain betrothal, and from ratified, not consummated, marriage.[1]

Before the Council of Trent public propriety arose in the same way from betrothal or *sponsalia de futuro*, and from ratified marriage or *sponsalia de presenti*, and extended to the fourth degree in both cases. The Council [2] abrogated the impediment arising from invalid betrothal, and restricted it, even when it arises from valid betrothal, to the first degree in the direct and collateral lines. It made no change in the law affecting public propriety when it arises from ratified marriage, and therefore when it arises from this source it still annuls marriage to the fourth degree, and arises even from invalid marriage, provided that it is not invalid for want of consent.[3] For if there is no consent, the ground of the impediment is wanting, that is, the union of minds, as that of affinity is union of bodies, and that of consanguinity community of blood. Another exception is that this impediment does not arise from ratified marriage when it is invalid on account of

[1] According to the new Code public propriety arises from invalid marriage, whether consummated or not, and from public or notorious concubinage, and annuls marriage with the relations by blood of the other party to the second degree inclusively in the direct line. C.J.C., can. 1078.

[2] Sess. xxiv, c. 3, de ref. Matr. [3] Pius V, *Ad Romanum*, July 1, 1568.

public propriety arising from previous betrothal with a relative of the other party in the first degree.

After the ratified marriage has been consummated, the impediment of public propriety is absorbed in that of affinity, and if a dispensation is required for a second marriage of the widow or widower with a relation of the former spouse, mention need not be made of public propriety, but only of affinity. The impediment, of course, lasts even though the betrothal or the marriage from which it arose is dissolved, unless a dispensation is obtained from the competent authority.

### Article IX

*Solemn Vows and Sacred Orders*

1. A solemn vow of chastity, taken in a Religious Order, strictly so called, or taken implicitly when sacred Orders are received in the Latin Church, is a diriment impediment of marriage by ecclesiastical law. This has long been the practice of the Western Church, and it was solemnly enunciated by the Council of Trent: "If any one saith that clerics constituted in sacred Orders, or regulars who have solemnly professed chastity, are able to contract marriage, and that being contracted it is valid, notwithstanding the ecclesiastical law or vow; and that the contrary is nothing else than to condemn marriage; and that all who do not feel that they have the gift of chastity, even though they have made a vow thereof, may contract marriage; let him be anathema: seeing that God refuses not that gift to those who ask for it rightly, neither does He suffer us to be tempted above that which we are able." [1]

In the Eastern Church marriage may be contracted

[1] Sess. xxiv, c. 9.

before receiving sacred Orders, and those who have married may use their marital rights after receiving sacred Orders, but sacred Orders are a bar to contracting a new marriage. This shows that sacred Orders, apart from the vow, which in the Latin Church is taken when they are received, are a diriment impediment of marriage. By a special privilege, the simple vow of chastity taken by members of the Society of Jesus at their first profession is also a diriment impediment of marriage.

2. As this impediment owes its origin to ecclesiastical law, the Church can dispense in it, but she seldom does so except for grave reasons which concern the public weal. Leo XIII granted bishops the faculty of dispensing, by themselves or through some trusty ecclesiastic, the sick who are in great danger of death so that there is not time to have recourse to the Holy See, from all, even public, impediments which annul marriage by ecclesiastical law, except the priesthood and affinity in the direct line arising out of the lawful use of marriage.[1]

### Article X

*Difference of Religion*

When a man and woman marry, they enter upon the closest possible union for mutual help and for the rearing and education of a family. Religion should be at the base of that union, and should furnish the fundamental principles for the education of their offspring. This, however, is hardly possible if husband and wife profess different religions, so that the very nature of marriage excludes difference of religion in husband and wife. If both the parties are baptized Christians, but only one is

[1] S.O. February 20, 1888.

a Catholic, difference of religion is only a prohibitory impediment; if one of the parties is not baptized, it constitutes a diriment impediment. The first is commonly called a mixed marriage, and we will devote to it the following section.

## Section I

### *Mixed Marriages*

1. Mixed marriages are forbidden by the natural, divine, and ecclesiastical law. For the parties are ministers to each other of the sacrament of Marriage; but it is unlawful for a Catholic without grave necessity to communicate in religious rites with a non-Catholic, and to receive a sacrament from him. Besides, it usually happens that in marrying a non-Catholic the Catholic party exposes himself to the danger of either losing his faith altogether, or at least of suffering its purity and brightness to be tarnished. The Church has forbidden mixed marriages from the earliest ages, and the Popes and bishops have issued innumerable instructions and warnings against them. It is without doubt a grave sin to contract a mixed marriage without a dispensation, and the Church shows her detestation of it by prohibiting any religious function at the marriage, even when a dispensation for it has been obtained.

2. However, in countries where Catholics and non-Catholics live together, and especially if the latter greatly outnumber the former, as they do in Great Britain and in the United States, it is almost impossible to avoid mixed marriages sometimes, and the bishops receive authority from the Holy See to grant the necessary dispensation. Certain conditions must be fulfilled before the

bishops can lawfully exercise their faculty of dispensing. In the first place, there must be a grave canonical cause, or a good reason such as the Church recognizes to be sufficient for a dispensation in this matter. In order to remove as far as possible the danger connected with mixed marriages, the Church requires that the non-Catholic party shall promise to leave the Catholic the free exercise of his religion, and that both parties promise to bring up all the children in the Catholic faith. Moreover, the Catholic party must undertake to do his best to bring about the conversion of his spouse to the Catholic religion. The necessity of these promises is founded in the natural and divine law, and although the common law of the Church does not demand that they be made in writing, this is frequently required by diocesan law.

If one of the parties be a baptized Catholic but one who has given up the practice of his religion without going over to any heretical sect, there is no strict impediment to his marrying a Catholic, but of course efforts should be made for his conversion, and if he remain indifferent the bishop should be consulted.

In England, when a dispensation has been obtained for a mixed marriage, the bishops allow the priest to assist at it at the altar rails vested in surplice and stole.

Note. — The practice in the United States is different from that of England, the priest not wearing stole or surplice, nor permitting the marriage to take place in the Church. (See Putzer, n. 219.) The Second Plenary Council of Baltimore (n. 334) says: "*Meminerint insuper sacerdotes, pluribus SS. Pontificum decretis vetari, ne ullus sacer ritus fiat, vel vestis sacra adhibeatur, dum fœdera ejusmodi*

*ineuntur, quæ neque intra ecclesiam ineunda sunt.*" The priest, however, is not forbidden to wear the cassock and biretta, because these pertain to his ordinary dress. — End of Note.

The banns should be published, but without any allusion to the difference of religion between the parties.

Note. — It is not the custom in the United States to have the banns proclaimed for mixed marriages. Dr. Heuser, in his book "The Parish Priest on Duty" (p. 136), asks, "Are the banns published in the case of mixed marriages?" The answer is, "No; because the Church is not supposed to take notice of the marriage as a sacred rite, although her minister attests it as a solemn mutual contract involving rights and duties." This custom of the United States is not contrary to the general practice of the Church regarding mixed marriages. In the supplement to the Roman Ritual for this country, under the heading, "*Modus assistendi matrimoniis mixtis,*" we find the following (p. 12): "*In ineundis istiusmodi nuptiis,* 1. *Ecclesia ea generatim omittenda indixit, per quæ Catholicorum matrimonia decorantur. Quoad proclamationes Bannorum, Sancta Sedes hisce postremis temporibus declaravit, illas posse fieri in mixtis nuptiis quæ Apostolica dispensatione contrahantur, suppressa tamen mentione Religionis conjugum: et solum quando ad detegenda si quæ sint impedimenta, eas necessarias atque opportunas Ordinarius in Domino censuerit.*" It may be noticed from these words that the banns are not absolutely forbidden in mixed marriages when the diversity of religion of the contracting parties is not mentioned; nor are they commanded — "*posse fieri in mixtis matrimoniis.*" But according to this

instruction they should only be employed when the ordinary deems them necessary and opportune. — End of Note.

A sermon before or after the function is not prohibited. Mass, however, should never be said nor the nuptial blessing given at a mixed marriage.

The Church does not allow the Catholic party to go through any marriage rite before a non-Catholic minister acting as such. If the non-Catholic minister acts as a civil magistrate, and Catholics are obliged to go through the marriage ceremony in his presence in order to have their marriages recognized by the State, it is permitted.

## Section II

### *Difference of Religion*

1. When one of the parties is a baptized Christian and the other is not baptized, marriage is not only forbidden, but is null and void by a universal custom of the Church, which has the force of a general law. Such a marriage, as is clear from St. Paul,[1] has been unlawful from apostolic times, but in the first centuries of the Christian era it was not invalid, and there are several well-known instances of saints being married to pagans. Gradually, however, a marriage between a baptized Christian and a pagan came to be looked upon as invalid, unless contracted in virtue of the Church's dispensation, and this has been the settled rule from about the beginning of the twelfth century. As the impediment is of positive law it can, of course, for grave reason be dispensed with, and then even the apostolic prohibition will cease if the dangers which are

[1] 2 Cor. vi. 14.

common to mixed marriages and to difference of religion can be avoided.

2. Difficulties arise when the Baptism of one or of both the parties is doubtful. According to the rule laid down in many decrees of the Roman Congregations doubtful Baptism with reference to marriage which is to be, or which has been, contracted, is presumed to be valid. Therefore marriage between one who is doubtfully baptized and another who is certainly not baptized is invalid on account of difference of religion. Marriage between two persons is valid when there is doubt about the Baptism of both or about its validity. Marriage is also valid when one of the parties is certainly baptized and there is a doubt about the Baptism of the other. In these cases it is the better opinion that as the above rule is only founded on a presumption, and this must yield to the truth, if afterward it is discovered for certain that one who was thought to be probably baptized was in fact never baptized, the marriage will be valid or not according as the other party was either not baptized or doubtfully or certainly baptized. Gasparri, however, and others think that when marriage has been contracted on the presumption of valid Baptism in case of doubt, it is valid and remains so, even though it is afterward discovered that the party in question was never baptized or that his Baptism was invalid. But this seems to be asserted on insufficient grounds.[1]

### Article XI

*Crime*

By ecclesiastical law certain crimes committed by married people which are specially opposed to the sanctity

[1] Wernz, Jus Decret. iv, n. 508.

of marriage constitute a diriment impediment of a second marriage. These crimes are: adultery together with a promise of marriage or attempted marriage with the adulterer, murder of a spouse with the machination of the other party, adultery and murder of a spouse. In order that these crimes may constitute a diriment impediment of another marriage, certain conditions explicitly or implicitly contained in canon law must be fulfilled. These will be described in the following sections.

## Section I

### *Adultery with Promise of Marriage*

1. When husband or wife commits adultery with a third person and promises to marry that person after the death of the other spouse, the Church makes the adulterers incapable of contracting a valid marriage even after the first has been dissolved by death. The aim of the Church is to protect married people, to guard the sanctity of marriage, and to punish crime. A law, however, which restricts the liberty of marriage must be strictly interpreted, and so Doctors require the following conditions in the adultery and in the promise in order that the impediment may arise:

*a.* The adultery must be real, formal on both sides, and complete. It must be real, or one at least of the parties must be united in a true, valid marriage. That fact must be known to both the adulterers, or else they are not guilty of formal but merely material adultery. If each party knows that the other is married and the other conditions are verified, there will be a double impediment between them. The adultery must be complete, so that

it would be possible for it to produce its natural result in offspring.

*b.* The promise, too, must be real, not fictitious, accepted by the promisee, absolute not conditional, made with knowledge of the present marriage, and undertaking to contract marriage after the death of the other spouse. For one of the objects of the law is to remove the temptation to plot against the life of husband or wife.

Both the adultery and the promise must have place during the continuance of the same marriage, but it is immaterial whether the promise be made before, after, or at the same time as the adultery is committed.

2. This impediment of crime also exists between parties who have committed adultery with each other and attempted to marry during the lifetime of the spouse of one of them. The adultery must have the same qualities as in the preceding case, and the marriage must be really and truly attempted, not merely feigned. It is immaterial whether the attempted marriage precede or succeed the adultery. It is obvious that those will lie under this impediment who, after a civil divorce from a spouse, marry again and consummate the attempted marriage.

## Section II

### *Murder of a Consort*

Murder by a man and a woman of the spouse of one of them constitutes a diriment impediment to their marriage. This impediment does not arise unless death really ensues; attempted murder is not sufficient. Moreover, the murder must be committed not by one of them alone, even if the other afterward approve of it, but by both,

either by mutual physical help, or by moral persuasion of some sort. Death must also be inflicted with the intention of marrying the other when free, as Doctors gather from the end of the law, which is to prevent murder of a consort with a view to marrying some one else. This intention must at least be manifested in some way to the other party, though it is not necessary that it should openly actuate both of them to the perpetration of the crime.

## Section III

### *Adultery and Murder*

1. When a man and a woman commit adultery and one of them murders his consort in order to marry his accomplice in adultery, the third impediment of crime arises between them and hinders the marriage. In this case there need be no promise of future marriage, nor any attempt at marriage, nor need the death be the result of the plotting of both of the parties. It will be sufficient if the adultery have the qualifications mentioned above in the first section, and murder really be committed with the intention of marriage manifested in some way, as by presents or by love letters to the other party.

2. If to adultery and murder as just described there be joined the promise of future marriage, and the plotting of the death of the consort of one of the parties with the conditions laid down in the previous sections, there will be not one but three impediments, and if marriage were actually attempted during the murdered consort's life, there will be four. The impediment is purely of ecclesiastical law, and therefore it does not bind those who are

not baptized. If, however, one of the parties is baptized, it will indirectly affect the other.

3. In the external forum ignorance of this impediment of crime can not be effectively pleaded in favor of the validity of a marriage contracted in such ignorance. Ignorance of fact but not ignorance of law is admitted as an excuse sometimes. However, in the internal forum it is a probable opinion defended by many Doctors that ignorance of this impediment excuses the parties from incurring it, and if marriage be contracted it will probably be valid. The reason is that this impediment differs somewhat from the rest, in that it has more of the nature of a penalty imposed on the delinquents than have the other impediments. Moreover, the penalty inflicted in punishment for crime, the incapacity to marry the other party, is extraordinary and not such as could be inferred from the nature of the crime, nor such as naturally follows its perpetration. Therefore, according to the general rule laid down in the treatise on Laws, ignorance will probably excuse the parties from incurring this impediment in the tribunal of conscience. This opinion will enable the confessor to allow guilty parties who make their sin known to him in confession to live together after marriage, but it will be safer to ask for a dispensation from the occult impediment and convalidate the marriage. If the crime becomes known to the confessor before marriage, a dispensation should be got before the marriage is contracted.

NOTE. — In the United States the bishops have the faculty of dispensing in this impediment according to Article 8, Form I: "*Dispensandi super impedimentum*

*criminis, neutro tamen conjugum machinante, et restituendi jus amissum petendi debitum.*" It is customary for the bishops to subdelegate this faculty to the priests of their respective dioceses. On the meaning of this faculty, see Putzer, n. 124. Whatever restrictions may be placed regarding the exercise of this faculty can be generally found in the *pagella* or diocesan statutes. — END OF NOTE.

## Article XII

### *Error, Slavery, Imbecility*

**1.** By error is understood a mistaken judgment by which one person or thing is taken for another. It differs from ignorance, which is merely the absence of knowledge. Error, if it is substantial, annuls marriage as it does other contracts, by the law of nature itself. For a contract is not valid unless there be an agreement of wills between the contracting parties, and there can not be that agreement if one of the parties is in error about the substance of the contract. There will be such a substantial error when there is a mistake about the person with whom marriage is contracted. If *A* thinks he is marrying *B* and intends to marry *B*, the marriage will be invalid if the other party to the contract is *C*, not *B*. Sometimes a mistake about the quality or rank of the other party may be substantial and invalidate the marriage. Thus, if a woman thinks she is marrying the eldest son of a peer, and only intends to marry the eldest son, who she thinks is present, the marriage will be null and void if the bridegroom is not the eldest son of a peer. Ordinarily, however, a mistake about the quality or condition of the other party will not be substantial, and will not invalidate the contract. If

the lady intends to marry the person present who she wrongly thinks is the eldest son, the marriage will be valid. It is possible that there should be a substantial mistake about the subject-matter of the contract of marriage. Thus, if a woman thinks that marriage is a mere union of friendship between the parties, and when she marries does not intend to give her husband any right to have children by her, the marriage is invalid. Mere ignorance as to the way in which children are brought into the world does not invalidate marriage.

2. If a freeman married a slave under the mistaken belief that she was free, the marriage was null and void by ecclesiastical law; if he married knowing the servile condition of the other party, the marriage was valid. To this extent the Church received the Roman legislation on the marriage of slaves, according to which they could not validly marry one that was free, and their marriages among themselves were merely at the good will of their masters. The law of the Church corrected what was inhuman in the Roman civil law, and adopted its provisions as far as they were in harmony with Christian principles. Nowadays, of course, this impediment can scarcely be of practical importance in any part of the world.

3. Imbeciles who have not the use of reason are incapable by the law of nature of contracting a valid marriage, unless it is contracted in a lucid interval. If the loss of reason supervenes on marriage which has been validly contracted already, it can not of course annul the marriage.

## Article XIII

### *Violence and Fear*

1. Violence is the onset of force too great to be resisted, and fear is a perturbation of mind arising from present or future danger. Here we treat of fear caused by extrinsic violence, inasmuch as it is a diriment impediment of marriage.

When marriage is contracted through grave fear, caused unjustly by a free agent with a view to extorting marriage, ecclesiastical law makes it null and void. Whether such a marriage is invalid by natural law is a moot point among Doctors. Fear may, indeed, sometimes be so excessive that it takes away the use of reason, so that a man under its influence does not know what he is doing. If a man married under the influence of such terror, the marriage would of course be invalid for want of consent. But commonly even grave fear does not produce such effects; a man in danger of shipwreck or death knows as a rule what he is doing, and if he marries in such circumstances, though induced by fear to do so, the marriage will be valid. But when he is unjustly forced by some one to marry against his will, the injury done to him is a sufficient reason for the Church to make the marriage null and void, even though he knew what he was doing and consented to the marriage. The only difference between this case and the former lies in the injury inflicted by the fear caused by a free agent. This, however, does not seem sufficient ground for asserting the nullity of the contract by natural law, though it affords a just reason why positive law should make it

invalid. The better opinion, then, seems to be that grave fear is a diriment impediment of marriage by ecclesiastical law when the fear is caused unjustly by some one with a view to compelling the party to marry against his will. Hence, if one who had violated a woman was threatened with a beating and married her in order to escape it, the marriage would be valid. Fear arising from reverence for parents and superiors is in general not sufficiently serious to make marriage contracted under its influence null and void. In certain circumstances, however, such a fear may become grave and sufficient to annul marriage. Much depends on the character of the party who was influenced by fear, and on the means employed to compel acquiescence to the wishes of harsh and severe parents or guardians. The question as to whether in any particular case there was grave fear is a question of fact to be determined by the ecclesiastical judge after weighing all the circumstances of the case.

2. Although marriage has been contracted under the influence of grave fear sufficient to render it invalid, the marriage may afterward become valid if fear disappears, and the party who was under its influence freely cohabits with the other, and expresses matrimonial consent. In this case it will not be necessary to repeat the external solemnization of the marriage unless the impediment was publicly known. It will be sufficient if the parties manifest their consent to be man and wife privately when freed from the influence of grave fear.

As may be gathered from what has already been said, slight fear, such as any ordinarily constituted person can despise, does not invalidate marriage, even when it is caused unjustly with a view to extort marriage

## Article XIV

### *Abduction*

The Council of Trent[1] made the following law: "The Holy Synod ordains that no marriage can subsist between the abductor and her who is abducted so long as she shall remain in the power of the abductor. But if she that has been abducted, being separated from the abductor and being in a safe and free place, shall consent to have him for her husband, the abductor may have her for his wife." This decree made abduction a diriment impediment of marriage, and in keeping with its tenor the impediment may be defined as the violent abduction of a woman from a place of safety to another place where she is detained in the power of the abductor for the purpose of marriage. In order to constitute the impediment the abduction must be against the will of the woman, whether it be effected by open violence, or threats, or fraud; for if she freely consent both to the abduction and to marriage, we have elopement, not abduction. Consent to both abduction and marriage is required, for the Council made an abducted woman incapable of contracting a valid marriage, as long as she is in the power of the abductor. The woman, too, must be the abducted party; if a man were forcibly carried off by the orders of a woman who wished to marry him, this impediment would not arise. It is a disputed point among Doctors as to whether the impediment would arise if a man carried off his betrothed by violence in order to marry her. The better opinion is that the impediment would hinder the marriage, for

[1] Sess. xxiv, c. 6, de ref. Matr.

although betrothal gave the man a right to marry the woman at the proper time, still it gave him no right to use violence for the purpose.

The words in the definition "from a place of safety," signify a place where the woman is not in the power of the abductor, so that to give rise to the impediment the woman must be taken from one place to another which is morally distinct, and where she is under the control of the abductor. The abductor's aim must be to contract marriage, not merely to satisfy his lust.

The impediment is of ecclesiastical law and lasts as long as the person abducted remains in the power of the abductor, for, as the Council says, if the woman be restored to her liberty and then freely chooses to have the abductor for her husband, the impediment ceases.

The Council imposed the penalty of excommunication on the abductor and on all who aid and abet him, besides obliging him to give the woman a sufficient dower whether he marry her or not.

## Article XV

### *Clandestinity*

**1.** A clandestine marriage is one that is contracted without the solemnities which are prescribed by the Church, so that a civil marriage before the registrar, a marriage in private, and a marriage before a priest not duly authorized to assist at it, are all clandestine marriages. Such a marriage always was and is gravely sinful, because it is forbidden by the Church on account of the great evils which frequently are the consequence, and because marriage is a sacrament and it should be received with fitting

solemnity in the Church. Moreover, the Council of Trent by the decree *Tametsi*[1] made clandestine marriages invalid in all places where the decree has been published according to the directions therein laid down. These will be best set forth in the words of the Council itself. The Council says:

"And that these so wholesome injunctions may not be unknown to any, it enjoins on all ordinaries that they as soon as possible make it their care that this decree be published and explained to the people in every parish church of their respective dioceses; and that this be done as often as may be during the first year, and afterward as often as they shall judge it expedient. It ordains, moreover, that this decree shall begin to be in force in each parish at the expiration of thirty days, to be counted from the day of its first publication made in the said parish."

2. This decree, then, differs from other ecclesiastical laws, in that there is a special mode prescribed for its promulgation, and it does not bind anywhere unless it has been thus promulgated, or at least unless it has been observed in the place for a long time as the decree of the Council of Trent. In order to obtain binding force in any place, the decree must be published in the parish church by the authority of the bishop, and it will begin to bind in the parish thirty days after it was first promulgated. This special mode of promulgation was adopted for the decree in order that difficulties might not arise from it concerning the marriages of heretics and schismatics. It was foreseen that they would not receive it, and yet they would be subject to it if it were promulgated in the ordinary way, and that therefore their marriages would be null and void

[1] Sess. xxiv, c. 1, de ref. Matr.

and their children illegitimate. In order to obviate these difficulties the Council prescribed that the decree should be published in each parish, so that the parishes which had fallen away from the Church would not have it promulgated for them and would not be subject to it. Therefore, as a general rule, the decree does not bind heretics in places where at the time of its promulgation they had separate churches and formed distinct religious bodies; on the other hand, it binds all, both Catholics and Protestants, if it has been published in a parish where the latter did not at the time form a separate religious body.

Thus there are places where the decree has never been published and where consequently it is not in force. Among these places are England, Scotland, Norway, Sweden, Denmark, most of the provinces of the United States of America, and some cantons of Switzerland.

There are other countries where it has been promulgated in almost every parish, and in general binds all baptized persons, whether Catholics or Protestants. Such places are Italy, Spain, Portugal, France, Austria, and Belgium.

There are other countries where marriages between Catholics are subject to the decree, but not others. Among these are Ireland, Holland, the German Empire, Russia, Poland, Canada, Louisiana and Florida, Hungary, Bombay, and Malabar.

As a general rule, where marriages between non-Catholics are exempt from the decree, mixed marriages are also exempt, and *vice versa;* but Malta is an exception, for by a decree January 12, 1890, marriages contracted there between non-Catholics are valid though clandestine, while clandestine mixed marriages are invalid.

3. The conditions required for the validity of a marriage

which is subject to the decree *Tametsi* are that the marriage must be solemnized in the presence of the parish priest of one of the parties, or in the presence of some other priest with the leave of the parish priest or of the ordinary, and two or more witnesses. If the parties live in different parishes, the parish priest of either place may assist at the marriage validly, but by custom, and sometimes by diocesan law, the parish priest of the bride is to be preferred. The priest who thus has the right to assist at a marriage is the priest of the parish where the parties have their domicil or quasi-domicil. A domicil is acquired in a parish by actually living in it and by having the intention of always living there unless called elsewhere. A quasi-domicil is acquired by living in a parish and having the intention of living there for the greater part of a year. By a special decree of the Holy Office, May 6, 1886, Catholics in the United States, who go from a place where the decree *Tametsi* binds, to another place where it does not bind and live there for one month, acquire thereby a quasi-domicil for the purpose of marriage.

Note. — The privilege referred to by the author was conveyed in the following terms: "*Eminentissimi Inquisitores Generales die* 6 *Maii* 1886, *re mature perpensa, sequens ediderunt decretum*: '*Concilio Baltimorensi postulante supplicandum SSmo ut decernere dignetur in Statibus Americæ confederatis, se transferentes e loco, ubi viget caput Tametsi, in alium locum, dummodo ibi continuo commorati fuerint per spatium saltem unius integri mensis, et status sui libertatem, uti juris est, comprobaverint, censendos esse ibidem habere quasi-domicilium in ordine ad matrimonium, quin inquisitio facienda sit de animo ibi permanendi per majorem anni partem.*' *In audientia vero die* 12 *Maii* 1886 *referente R.P.D.*

*Josepho D'Annibale S. Officii adsessore, SSmus Dominus Leo XIII prædictum EE. PP. Decretum sua auctoritate ratum habere et confirmare dignatus est, contrariis quibuscunque non obstantibus.*"

It may be said that the proper interpretation of this privilege has now an historical interest only on account of the new legislation of the Church contained in the decree, "*Ne temere*," which makes the acquisition of a quasi-domicil by a month's residence universal and thus causes the privilege as such to cease in the United States. However, the validity of a considerable number of marriages already contracted in this country depends upon the true meaning of the privilege, so that according to a stricter interpretation many marriages would require revalidation. From the words quoted it follows that in the United States persons who move from a place where the *Tametsi* is in force to another place where they stay continuously for one month are to be considered as acquiring in this latter place a quasi-domicil sufficient for marriage. The author interprets "*alium locum*" as another place where the *Tametsi* is not binding. Many, however, have understood "*alium locum*" as another place, different from the former place of residence, whether the *Tametsi* was binding or not in the new residence. The difference between the two opinions has been of practical importance. Thus a person leaving the city of St. Louis where the decree is binding and going to the diocese of New Orleans where it is also binding would not, according to the author's opinion, after a month's residence in the latter place, acquire a quasi-domicil, while according to the other opinion he would acquire it because he would go to another place, thus verifying the terms of the decree. There are also some,

perhaps more correctly very many, who have held that the privilege in question should properly be extended to all who go from one place to another, irrespective of the existence of the *Tametsi* in the former place of residence; so that if a person reside in a place for a month, he would acquire a quasi-domicil there, whether he left a place where the *Tametsi* was or was not in force. Comparing this last opinion with the two preceding ones, it is evident that these follow more closely the literal meaning of the words expressing the privilege, while the other seems to be extending the privilege beyond the strict signification of the terms. On the other hand, when one considers the motive with which the bishops of this country asked for the privilege and the fact that the Holy See evidently wished to accede in substance to their request, the third opinion appears more probable than the other two. The chief reason for the petition was, in the words of the bishops: "*Gravia incommoda et anxietates ac molestiæ quæ frequenter sacerdotibus oriuntur, si canonicæ præscriptiones de quasi-domicilio sint servandæ.*" In the United States there is a large fluctuating population, so that many persons do not have any permanent abode, nor can it be even said that they have the essentials hitherto required for a quasi-domicil, *i.e.*, actual residence with the intention of staying for the greater part of a year. They may have remained for a month or two in a place, but there was no intention of making it their abode nor of remaining even for six months, so that it was often difficult to say who was their *proprius parochus* for matrimony. Then, if a priest to whom parties of this kind would apply for marriage should not be able, on account of the uncertainty about their *proprius parochus*, to tell them the priest who could attend to their marriage,

there would be danger that they would contract a civil marriage or perhaps contract before a non-Catholic minister. Hence it was important to have some fixed period of residence determined, *e.g.*, one month, so that, apart from any intention of the parties to leave or to remain, the pastor of the place where such residence for a month occurred could perform the marriage ceremony. Now a large number of such cases would arise from persons going from a place where the *Tametsi* was not binding to some other place, so that it is to be presumed that the bishops in their petition proposed to make provision for such cases. Similarly, it is to be presumed that the Holy See intended to make provision so that after a month's residence in a place a person might get married by the pastor of that place, no matter whether he had immediately before lived in a place where the *Tametsi* was binding or in a place where it was not binding. Let us suppose, for example, that a female from some rural parish of the diocese of St. Louis, in which parish the *Tametsi* is not in force, comes into the city of St. Louis, where it is in force, and lives as a servant in some parish of the city for a month. Can she be married by the pastor of this parish on the ground of the month's residence? Yes or no, according to the mode in which the privilege should be interpreted. One thing, however, seems beyond doubt, *viz.*, that it was the intention of the bishops to procure for the pastors the privilege by which a month's residence would suffice for a quasi-domicil in this class of cases as well as in the converse class, namely, when the party leaves, *e.g.*, the city of St. Louis and goes to some parish in the country where the *Tametsi* is not binding. It is also clear that there would be at least equal reason for a favorable answer to the former petition as to the latter.

The question regarding those interpretations of the privilege has not been settled by the Holy See. De Becker, in his treatise, "De Sponsalibus et Matrimonio," says that a dubium regarding the extent of the privilege was proposed to the S. C. of Propaganda by a bishop of the United States, but that no reply was received. — END OF NOTE.

In order to lose a domicil or quasi-domicil that has once been acquired, the party must leave the place and must have the intention of not returning to it.

Minors who are not *sui juris* retain the domicil of their parent or guardian as long as they do not renounce it; married women similarly retain the domicil of their husbands. Public officials, professors, students, servants, and others in like capacities, acquire a quasi-domicil in the place where their avocations call them as soon as the two necessary elements are verified, as soon, that is, as they actually take up their abode in the place with the intention of staying there for the greater part of a year unless they are called elsewhere.

4. Strangers who are staying for a time in a place subject to the decree must conform to the law of the place with regard to marriage, even though they come from a parish where it does not bind, for contract is governed by the law of the place where it is entered into. Embassies of foreign nations do not enjoy the privilege of exterritoriality in this respect, so that the marriage of a baptized British subject contracted in the British embassy at Rome is subject to the decree of Trent.[1] Strangers, who come from a place where the decree binds to another place where it does not bind, with the fraudulent intention of marrying there, can not contract a valid marriage unless they acquire a

[1] S.O. August 1, 1900.

domicil or quasi-domicil in the place, or obtain leave for some priest to marry them there from their parish priest or from their ordinary.

It is a disputed point whether two strangers who came from a place where the decree binds without any intention of marrying could contract a valid marriage in a place where the decree does not bind, without acquiring a domicil, quasi-domicil, or obtaining the leave of their parish priest. The decisions of the Roman Congregations favor the negative view, so that such a marriage should never be permitted, though after being contracted it can only be declared invalid by competent authority.

Those who wander about and have no domicil or quasi-domicil anywhere, may with leave of the ordinary validly and lawfully contract marriage in the presence of the priest of the parish where they happen for the time to be staying. Such people are called *vagi*.

Any one in priest's orders may receive delegated authority from the parish priest or the ordinary of the parties so as validly to assist at their marriage.

5. Besides the priest, at least two witnesses must assist at a marriage, according to the decree of Trent. Any person, whether a man or a woman, who has the use of reason and who knows what is going on so that he can give evidence on it, may act validly as a witness. If at any time there comes to be a general impossibility for those who wish to marry in any place to reach the parish priest, and if the impossibility lasts for a considerable time, marriage may be contracted validly before witnesses alone. We saw above that impossibility of getting at the parish priest in the case of a particular marriage would not exempt the parties from the law.

The law regarding clandestine marriages, like any other positive enactment, may be abrogated by contrary custom, as in fact it has been in Japan. The Holy Office, however, has several times declared that the mere non-observance of the decree by schismatics and heretics can never cause the decree of Trent to lose its binding force.

From what has been said it follows that clandestine marriages in England are indeed gravely sinful, but as a general rule were not invalid, unless there was some other diriment impediment between the parties. If Catholics had contracted a valid but clandestine marriage, they could repent of their sin, and then ask for absolution and the nuptial blessing from the priest. In the case of a mixed and clandestine marriage there appeared to be no obligation of giving or receiving the nuptial blessing, though this might be done unless the bishop ordained otherwise.[1]

The decree of the Sacred Congregation of the Council, August 2, 1907, made a great change in the law of the Church with regard to clandestine marriages. The decree affects all marriages contracted on and after Easter Sunday, April 19, 1908, in which one of the parties at least is a baptized Catholic, but it does not affect marriages contracted before that date.

By this decree no marriage is henceforth valid unless it be contracted before the parish priest, or one who has the general cure of souls in the place where the marriage is celebrated, or before the local ordinary, or before a priest delegated by one or the other, and before at least two witnesses. In order to assist at marriage validly the priest and the local ordinary must have acquired possession of their office, and not be publicly and by name excommuni

[1] S.O. December 14, 1865.

cated or suspended from that office. They can assist validly only within the limits of the territory assigned to them, but within those limits they can validly assist at a marriage contracted either by their subjects or by others. They must freely ask and receive the consent of the parties without being compelled thereto by force or grave fear. Something more is necessary in order that their assistance be also lawful.

They must have satisfied themselves in the manner prescribed by law of the freedom of the parties to marry ;[1] also that one of the parties has a domicil in the place where the marriage is contracted or at least has lived there for a month ; otherwise, in order that the priest or the local ordinary may lawfully assist at marriage, they need the leave of the priest or of the ordinary of one of the parties, unless there be grave necessity which excuses from it.[2]

Except in case of necessity a priest may not assist at the marriage of those who have no fixed place of abode without leave of the Ordinary after the matter has been referred to him or to a priest deputed by him for the purpose. As a general rule the marriage must take place before the priest of the bride unless there be some good reason to the contrary.

A parish priest, and one who has the general cure of souls, and the local Ordinary, may grant leave to any determinate and certain priest to assist at marriages within the limits of their respective territories. But

[1] They must have satisfied themselves that one of the parties has a domicil, or quasi-domicil, or at least has lived there for a month. C.J.C., can. 1097, sec. 1, 2°.

[2] They need the leave of the parish priest, or of the ordinary, of the domicil or quasi-domicil, or of the place where one of the parties has lived for a month. C.J.C., can. 1097, sec. 1, 3°.

in order to assist lawfully and validly, such delegated priest must observe the terms of his mandate, and the rules laid down above for the assistance of the parish priest and of the local ordinary.

In imminent danger of death when the parish priest, or one with the general cure of souls in the place, or the local ordinary, or a priest delegated by one of them, can not be had, marriage may be contracted validly and lawfully before any priest and two witnesses for the sake of conscience and the legitimization of children, if this is required.

If in any country neither a priest with the cure of souls nor the local ordinary, nor a priest delegated by either of them can be had, and that has now been the case for a month, the parties may marry validly and lawfully by expressing their formal consent before two witnesses.[1]

When marriage has been celebrated, the priest who has the cure of souls, or one who takes his place, must at once insert in the marriage book the names of the spouses and of the witnesses, the place and date of the marriage, and other details, according to the method prescribed in the Ritual or by the ordinary; and that, although another priest delegated by him or by the local ordinary assisted at the marriage.

Moreover, the priest who has the cure of souls must note also in the "Book of Baptisms" that the party

[1] If it is prudently foreseen that neither a priest with the cure of souls, nor the local ordinary, nor a priest delegated by either of them, can be had, or approached without serious inconvenience for the space of a month, a marriage contracted in the presence of witnesses alone is valid and lawful. But if there is another priest who can be summoned, he should assist with the witnesses. C.J.C., can. 1098, 1°, 2°.

contracted marriage on such a day in his parish. And if the party were baptized elsewhere the priest of the marriage must send notice to the priest of the Baptism either immediately or through the bishop's court, so that the marriage may be entered in the "Book of Baptisms." When marriage has been contracted in danger of death before a priest procured for the purpose, or only before two witnesses as above, the priest in the former case and the witnesses in the latter are bound jointly and severally with the contracting parties to take care that the marriage be entered in the prescribed books as soon as possible.

Priests guilty of violating these precepts are to be suitably punished by the ordinary, and one who without leave or just cause marries the subjects of another must surrender the fees received to the priest whose rights he has infringed.

Heretics and schismatics who have never been admitted into the Catholic Church are not bound by this decree.[1]

Mixed marriages, however, in which one of the parties is a baptized Catholic, are subject to the decree, except in the German Empire, where they are valid if the parties were born and marry therein.

[1] Children of non-Catholic parents who were baptized in the Catholic Church, but who afterwards grew up from childhood as non-Catholics, are not subject to the law. C.J.C., can. 1099, sec. 2.

## CHAPTER XI

### DOUBTFUL IMPEDIMENTS

1. When there is a doubt as to the existence of a diriment impediment which annuls marriage by natural or divine law, marriage must not be contracted, for as there would always be a doubt as to whether it was valid, the parties would be exposed to the continual danger of sinning against the natural law. Theologians make an exception to this general rule in favor of those who labor under probable impotence, for these may marry on account of the strong presumption that all men are potent unless the contrary is certain, and because it would be an intolerable hardship to prohibit a person from marrying because of such a doubt. In the case of a doubtful impediment of positive law, we must distinguish between a doubt of law and a doubt of fact. When there is a doubt whether the positive law extends to the particular case, as whether spiritual relationship arises between the sponsors in a private Baptism and the child or his parents, the impediment practically does not exist, as the law is of strict interpretation and the Church dispenses as far as is necessary in such a case of doubt.

When the doubt is about a fact, as whether the parties are related within the prohibited degrees of kindred, the Church does not supply if the impediment really exists, and a dispensation should be asked for to make sure. The bishop has power to dispense in such cases of doubt.

When marriage is contracted with a supposed impediment which in reality does not exist, the marriage will of course be null and void if the parties thought that it was altogether impossible, and merely intended to go through the external form. On the other hand, it would seem to be valid if they intended to marry as far as they could, though they were afraid they could not do so. And so if one, whose consort has been absent for a long time and who is not known to be dead, as in fact he is, marries again, giving her consent to the marriage as far as possible, it would seem that the marriage is valid though unlawful.

2. When a marriage has been contracted and a doubt subsequently arises as to its validity on account of the probable existence of a diriment impediment, inquiry must be made with a view to settling the doubt, and in the meanwhile the party in doubt must abstain from asking for the marriage debt, though he is not precluded from rendering it to a consort who asks for it in good faith without any suspicion about the validity of the marriage. If the doubt still remains after ordinary diligence has been used in making inquiries, the doubt may be put aside, and the marriage may be presumed to be valid. The rules of law may be applied to such a case, "In doubt we must presume the validity of the act," and, "In doubt the condition of him who is in possession is the stronger." These rules apply with all the greater force inasmuch as marriage is favored, and the decision must always be given in its favor in case of doubt.

If it becomes certain that a marriage which has been contracted is invalid by reason of a diriment impediment existing between the parties, and the invalidity is publicly known, the parties must separate. Otherwise there would

be danger of sin and public scandal. If the impediment is secret and the parties are in good faith without any knowledge of its existence, they should be left in their ignorance until a dispensation from the impediment has been obtained. The dispensation should be executed in one of the ways to be described in a subsequent chapter.

If the parties know of the existence of the impediment and of the consequent nullity of their marriage, they must separate at least from bed, until a dispensation can be procured. Whether they can be permitted to live together as brother and sister in the same house, depends on whether they can thus avoid all proximate occasion of sin. If they can not, some excuse to avoid scandal and awaking suspicion must be found for a temporary separation.

## CHAPTER XII

### DISPENSATIONS FROM DIRIMENT IMPEDIMENTS

1. The Church can not grant a dispensation from those impediments which belong to the natural and divine law. She can not, for example, allow a Christian to marry again while a former wife is still alive, nor dispense in a case of certain impotence. Although she can dispense in all impediments which have their origin in ecclesiastical law, yet as a matter of fact she but seldom does so in some of them, such as the priesthood, and affinity in the first degree arising from consummated marriage. The Council of Trent decreed universally that "as regards marriages to be contracted, either no dispensation at all shall be granted, or rarely, and then for a cause, and gratuitously." [1] Still, according to modern discipline it is not uncommon for dispensations to be granted in the more remote degrees of consanguinity and affinity, in spiritual relationship, in occult crime, and in some other impediments.

2. As the diriment impediments of marriage belong to the common law of the Church, *per se* only the Holy See can lawfully dispense in them. However, when there are very grave reasons for granting a dispensation and there is no time to communicate with Rome, bishops may dispense in occult impediments, as, by a concession of Leo XIII, February 20, 1888, they may also do in both public and

[1] Sess. xxiv, c. 5, de ref. Matr.

occult impediments when one of the parties is in danger of death and there is not time to have recourse to Rome. Bishops may dispense, too, in doubtful impediments for the sake of greater security. Besides these ordinary powers, granted to them by custom or by the express or tacit consent of the Pope, the bishops of most countries now commonly receive from the Holy See delegated authority to dispense in those impediments which are more easily dispensable. When the parties are subject to different bishops, that bishop will have power to dispense whose subject is specially bound by the impediment, as, for example, the person under vow, and the Catholic party in a mixed marriage. If both parties are equally affected by the impediment, as by that of consanguinity, and the dispensation is granted by faculties received from Rome, either bishop may lawfully grant the dispensation. It has several times been decided that all special faculties habitually granted to local ordinaries by the Holy See neither cease nor are suspended on account of their death or removal from office, but pass to their successors according to the terms of the decree of the Holy Office, Feb. 20, 1888.

The Pope dispenses from public impediments through the datary,[1] and from occult through the penitentiary. Propaganda, however, exercises the authority of both those offices in favor of those who are subject to its jurisdiction, as some English-speaking countries are, though they may have recourse to the penitentiary, if they choose, in matters subject to its jurisdiction.

When application is made to the datary for a dispensation from a public impediment in favor of parties who also

[1] After November 3, 1908, through the Congregation on the Discipline of the Sacraments.

labor under an occult impediment, a dispensation from the latter must be sought from the penitentiary, mentioning the public impediment for which a dispensation has been asked from the datary, but without giving the real names of the parties. In this case, when a bishop has faculties to grant both such dispensations, he does not require the special faculty of *cumulating*, as he does in other cases of multiple impediments.

As a general rule when the Holy See grants a dispensation, this is granted *in forma commissoria*, by which the bishop who sent in the petition is commissioned to dispense the parties after verification of the allegations made, and under certain conditions. The bishop thus commissioned may delegate the verification of the allegations and the execution of the dispensation to one of his clergy, or if the parties live in another diocese to the bishop of that diocese.

A tax to cover expenses and a composition to be spent on pious purposes is imposed on parties dispensed by the ordinary Roman tribunals. The composition varies with the impediments for which a dispensation is asked, and according as the parties are poor, almost poor, or rich. The penitentiary grants dispensations gratuitously from occult impediments, and in recent times it has obtained power to dispense the poor even from public impediments.[1] It is a disputed question whether a dispensation granted by the penitentiary from a public impediment in favor of one who falsely alleged that he was poor would be valid.

Propaganda grants dispensations to its subjects gratuitously, but it sometimes requires the party dispensed to offer an alms.

[1]This power was taken away by the Constitution *Sapienti consilio* 29 June, 1908.

3. Matrimonial dispensations can not be granted lawfully even by the Pope without good cause, and a good cause is required for the validity of a dispensation granted by a bishop. A cause is motive or final when it is ordinarily deemed sufficient for granting a dispensation; when it only induces the superior to grant a dispensation more readily, it is said to be impulsive. When the petition for a dispensation omits to mention what should be mentioned, it has the defect of *subreption;* when it alleges what is false, there is *obreption.*[1] When subreption or obreption occur in the motive cause, the dispensation is invalid at least if the cause alleged was the sole cause, and even if it was not the validity of the dispensation is doubtful. Subreption or obreption in an impulsive cause does not affect the validity of the dispensation. In doubt as to whether a cause falsely alleged for a dispensation was motive or impulsive, the presumption will be in favor of the validity of the dispensation, *In dubio standum est pro valore actus.* If the motive cause for granting the dispensation ceases before the dispensation is executed, the dispensation will lapse; if, however, the motive cause ceases to exist after the dispensation has been executed, though before the marriage has been contracted, the impediment has been removed and the parties may marry.

Propaganda, May 9, 1877, issued an instruction on matrimonial dispensations, which sets forth and explains the ordinary canonical causes which are accepted as sufficient for granting a dispensation. The same causes, however, are not sufficient for a dispensation from all impediments, and the party interested should put down in his petition all the grounds that he can find for granting the favor he requests. We can not do better than give

[1] Dispensations of lower degree remain valid in spite of any subreption or obreption; and even those of higher degree remain valid when they were issued *motu proprio,* unless there was obreption in the only motive cause alleged for them. C.J.C., can. 45 and

here the chief portion of this important document in Fr. Guy's translation:

"1. *Smallness of the place,* either absolute or relative (as regards the female petitioner alone), seeing that in the place of her birth or even domicil a woman's relationship is so widely spread that she is unable to meet with any one to be married to of an equal position with her own, save a relative by blood or by marriage, without leaving her country, which would be a hardship to her.

"2. *The advancing age of the woman.* If, for instance, she is over twenty-four and has not hitherto met with one of her own position to whom she might be married. But this reason does not hold good in the case of a widow wishing to marry again.

"3. *Deficiency or absence of dowry.* If a woman has not actually a dowry large enough to enable her to marry another of her own position, unconnected by blood or marriage, in her own place of abode. And this reason becomes all the more weighty when the woman has no dowry at all and a relation by blood or by marriage is willing to marry her, or even to make a suitable settlement upon her.

"4. *Contentions about inheritance* that have already arisen or serious or imminent danger of the same. If a woman has on hand an important suit in reference to her inheriting wealth of great amount, and there is no one else to undertake a contention of this kind and carry it on at his own expense save the person who is desirous of marrying her, a dispensation is usually granted, for it is of benefit to the community at large that an end should be put to the contention. A reason of this nature, however, suffices only in cases of remote grades of relationship.

1054. If, however, the dispensation was issued without some one to execute it, it will be sufficient if the causes be verified at the time of issue. C.J.C., can. 41.

"5. *Poverty* on the part of a widow with a numerous family which some man promises to support. But at times a widow obtains the benefit of a dispensation owing to her youth and the danger of incontinence.

"6. *The blessing of peace;* and under this head come not only treaties between realms and princes, but the cessation of serious enmities, disturbances, and ill will between citizens.

"7. *Too great, a suspicious, or dangerous familiarity,* as well as having, almost unavoidably, to dwell together under the same roof.

"8. *Previous connection* with a relation by blood or by marriage, or with any other party under an impediment, and *pregnancy, with consequent legitimization of the offspring,* in order to provide for the well-being of the offspring and the good name of the mother, who would otherwise remain unmarried.

"9. *Disgrace* coming upon the woman arising from a suspicion that through over-familiarity with a relative or connection she had been seduced by him, although the suspicion should be false, in a case when unless she marries, a woman seriously defamed would either remain unmarried, or must marry beneath her, or serious loss would ensue.

"10. *Revalidating a marriage* which has been contracted in good faith, and publicly in the way prescribed by the Council of Trent, because its dissolution could hardly be brought about without grave public scandal and heavy loss especially on the woman's part. But if the parties have got married in bad faith, they by no means deserve the favor of a dispensation as the Council of Trent decides.

"11. *Danger of a mixed marriage,* or of its being cele-

brated before a non-Catholic minister. When there is danger of those wishful of being married, though connected in one of the closer degrees, going before a non-Catholic minister for the marriage in defiance of the authority of the Church, by reason of the refusal of a dispensation, there are just grounds for dispensing; for there is imminent danger not only of a most serious scandal to the faithful, but also of apostasy and loss of faith on the part of those so doing and disregarding the impediment to matrimony, especially in countries where heresy flourishes unchecked. The same must be said in the case of a Catholic woman who ventures upon marriage with a non-Catholic man.

"12. *Danger of incestuous concubinage.*

"13. *Danger of a civil marriage.* From what has been said, it follows that probable danger of those who are petitioning for the dispensation having only a civil marriage, as it is called, if they can not get the dispensation, is a lawful reason for dispensing.

"14. *The removal of grave scandal.*

"15. *Putting a stop to open concubinage.*

"16. *Merit,* that is in the case of one who has by resisting the enemies of the Catholic faith, or by generosity toward the Church, or by his learning, virtue, or some other means, deserved well of religion.

"Such are the more common and strong grounds which are usually brought forward when matrimonial dispensations are to be petitioned for; and theologians and canonists treat of them exhaustively.

"But this instruction now turns to those points which, in addition to the grounds for obtaining the dispensation, must, whether by law, custom, or the practice of the curia, be expressed in the petition, or the dispensation becomes

null if the truth be kept back or what is untrue is advanced even in ignorance. These are:

"1. *The name* and *surname* of the petitioners must both be written down distinctly and clearly, without any abbreviation.[1]

"2. *The diocese* of birth or of actual domicil. When petitioners have a domicil out of the diocese of their birth they can ask, if they please, that the dispensation should be sent to the ordinary of the diocese in which they are actually residing.

"3. *The species* (in its most determinate form) of the impediment, whether it is consanguinity or affinity, arising from lawful or unlawful connection; public morality (*honestas*) arising from espousals or the marriage ceremony; in the case of an impediment by reason of crime, whether it arose from murder of the party's spouse with the promise of marriage, or from such murder with adultery, or from adultery alone with the promise of marriage; in spiritual relationship, whether it is between a god-parent and the person baptized, or between a god-parent and one of the parents of the person baptized.

"4. *The degree of consanguinity or affinity* [2] or morality (*honestas*) arising from a marriage ceremony, and whether it is a simple or mixed degree, the more remote as well as the less, together with the line, and whether it is direct or collateral; likewise, whether the petition-

[1] If in the judgment of the ordinary a mistake in the name of the person or place or object leaves no room for doubt as to the person or object, the dispensation remains valid. C.J.C., can. 47.

[2] According to the new Code a dispensation will remain valid if a mistake were made in the degree of consanguinity or affinity provided that the impediment was of a lower degree or another impediment was not mentioned of the same species and of a lower or equal degree. C.J.C., can. 1052.

ers are related by a double tie of consanguinity, both on the father's and mother's side.

"5. *The number of impediments;* for instance, is the consanguinity or affinity twofold or manifold; or is there affinity as well as relationship; or any other kind of impediment diriment or prohibitory.

"6. *Various circumstances*, such as whether the marriage is to be or has been contracted; if contracted, it must be stated whether this was done in good faith at least on one side, or with a knowledge of the impediment; likewise, whether it was after proclamation of banns and in accordance with the prescriptions of the Council of Trent, or whether with the view of more easily obtaining a dispensation; finally, whether it has been consummated, if in bad faith, at least on one side, or with knowledge of the impediment." [1]

The instruction required that mention be made of incest, if this crime had been committed between the parties who asked for the dispensation, but this obligation was abolished by a decree of the Holy Office, June 25, 1885.

4. It was stated above that as a rule the Holy See grants dispensations *in forma commissoria*. When the impediment is occult the commission to dispense the party laboring under the impediment is issued to the confessor. It will therefore be the confessor's duty to verify the allegations as far as possible and faithfully to observe all the conditions laid down in the papal rescript. The observance of the conditions expressed by such terms as, *Provided that, If*, or *the ablative absolute*, is necessary for the validity of the dispensation. Besides the conditions, certain things are also prescribed, such as the destruction of the rescript

[1] Synods in English, p. 78.

after it has been executed; but these matters do not affect the validity of the dispensation. One of the usual conditions is previous sacramental confession, which requires the hearing of the confession of the party, but not necessarily his absolution. If this clause is not in the rescript, it may be executed outside the confessional. No special form is prescribed for granting the dispensation, which may be done by word of mouth.

When the impediment is public the commission is issued to the ordinary of the parties or to the ordinary of the place where they live. After the ordinary has received the rescript he may delegate the verification of the clauses to the parish priest of the parties, and after this has been done he may grant the dispensation according to the terms of the rescript, and on being signed by the ordinary the dispensation will at once take its effect. The document or a copy of it should be sent to the parish priest, who will inform the parties that the dispensation has been duly granted.

When the bishop is able to grant the necessary dispensation, he ordinarily does so *in forma gratiosa*. This signifies that on receipt of the petition and having satisfied himself of the truth of the allegations contained in it, he grants the dispensation forthwith by signing a document drawn up in due form, and sends it to the parish priest, who will inform the parties of the terms on which it has been granted.

## CHAPTER XIII

### REVALIDATION OF MARRIAGE

1. When marriage has been contracted invalidly the ordinary thing to do is to secure its being contracted validly, if this is possible. It may have been invalid on account of clandestinity, or for want of consent, or because there was some diriment impediment between the parties.

When the marriage was invalid on account of clandestinity, it must be revalidated by supplying the defect and contracting marriage anew before the parish priest and two witnesses. If the invalidity of the first marriage was known publicly, the second must be publicly solemnized; otherwise it will be sufficient to contract it in private.

2. When the first marriage was invalid for want of consent of both the contracting parties, the only way of revalidating it is by both renewing their consent. This, again, should be done publicly if the invalidity of the former marriage was matter of public knowledge; in other cases it will be sufficient to renew consent in private. When the former marriage was invalid for want of consent of only one of the parties, it will be sufficient if this party after becoming acquainted with its invalidity freely renews his consent. This may be done validly not only by express word of mouth, but by living together as man and wife, and exhibiting the ordinary signs of matrimonial union.

3. When the first marriage was invalid on account of some diriment impediment between the parties, the first

thing to do is to remove the obstacle to marriage by obtaining a dispensation from the impediment and duly executing it. If both the parties were aware of the impediment, they must renew their consent either in public or in private, according as the nullity of the marriage was publicly known or not.

If only one of the parties was aware of the impediment and it was such as to affect that party alone directly, as does, for example, the impediment of difference of worship, after the dispensation has been procured and executed it will be sufficient if the Catholic party renews his consent explicitly or implicitly by living in matrimonial union. The consent of the other party was valid as expressed in the first instance and it is continually renewed by living in marriage. When impediments like those of consanguinity and affinity equally affect both parties though only one of them is aware of it, as a general rule the other party must be told of the nullity of the previous marriage in order that both may express a valid consent together. This is ordinarily required by a special clause inserted in dispensations granted in such cases, when it can be done without grave inconvenience. Sometimes, however, this can not be done openly, and then it will be sufficient if, without indicating the real ground of nullity, the party who knows of the impediment induces the other to renew his matrimonial consent independently of the former consent which was invalid.

Sometimes not even this can be done, and in such cases of special difficulty recourse may be had to a dispensation *in radice*, as it is called, by which the Holy See sometimes revalidates a marriage without any renewal of consent by the parties. By a dispensation *in radice* the diriment

impediment which existed is removed, the marriage is validly contracted by the consent which was given in the former marriage and which still subsists, and the children, if any have been born, are legitimized as if the former marriage had been valid. By a fiction of law, the former marriage is held to be valid and to have all the effects of a valid marriage.

It is obvious that to enable the Church to do this the impediment must be of merely ecclesiastical origin, and so capable of being removed by the Church; the consent given in the former marriage must of itself be valid and capable of effecting a real marriage except for the impediment, and, moreover, the consent of the parties must still persist at the time when the dispensation is given, otherwise true marriage can never exist between the parties. If these conditions are fulfilled by a dispensation *in radice* without any renewal of consent, the parties will be truly married, and the effects of marriage will date from the first contract, though it was invalid.

Note. — The bishops of the United States have received the faculty *sanandi in radice* in Article 6, Form D, which is as follows: "*Sanandi in radice matrimonia contracta quando comperitur adfuisse impedimentum dirimens super quo, ex Apostolicæ Sedis Indulto, dispensare ipse possit, magnumque fore incommodum requirendi a parte innoxia renovationem consensus, monita tamen parte conscia impedimenti de effectu hujus sanationis.*" The authority of dispensing in matrimonial impediments may be exercised either with regard to a marriage to be contracted, or to a marriage already contracted, but invalidly on account of the existence of some diriment impediment. In the latter

class of cases a bishop may exercise his powers of dispensing in impediments so that the parties by mutual renewal of consent after the application of the dispensation would become validly married. This simple dispensation, as it is termed, may be granted by our bishops in the United States according to the limitations in Forms I, D, and E. The authority of granting a dispensation *in radice* is quite distinct, so that a bishop who can grant a simple dispensation may not have power to grant a dispensation *in radice*. As a matter of fact many bishops have no such permanent power. They may apply to the Holy See in a particular case and be empowered to grant the *sanatio in radice* for that case without receiving any lasting or habitual power for other cases which may arise. The *sanatio in radice* is said to be "perfect," when neither of the parties who invalidly contracted renews the matrimonial consent; "imperfect" *sanatio* occurs when one of the parties is aware of the impediment and gives a new consent. This latter kind alone our bishops have the faculty of granting, as will be presently seen.

The faculty *sanandi in radice* as expressed above in Article 6, Form D, was for a long time the subject of considerable doubt and controversy, as is well known to the readers of the "American Ecclesiastical Review"; but much light has been thrown upon it from recent decisions of the Holy See, and especially from responses of the Holy Office (August 22, 1906) to questions proposed by the bishop of Covington.

1. By this faculty the bishops can grant a *sanatio in radice* in each ecclesiastical impediment in which by virtue of powers granted them under Forms I, D, and E they could grant a simple dispensation, as is clear from the words

"*super quo ex Apostolicæ Sedis Indulto, dispensare ipse possit.*" This power does not, however, authorize them to give a *sanatio in radice* whenever several diriment impediments, or one diriment impediment along with a reserved impediment, *e.g., mixta religio,* arises in a given case, as was declared to the bishop of Burlington by the S. C. of Propaganda (January 30, 1882). Just as the authority to dispense in any canonical impediment by simple dispensation does not imply the power of dispensing in several impediments which may exist together in a particular case, so neither does the power of giving a *sanatio in radice* for several impediments imply the power of giving a *sanatio in radice* when those impediments are found together. A bishop may, therefore, receive the cumulative power, as it is termed, to grant a "simple" dispensation, *i.e.*, for several existing impediments, without having the cumulative power to grant a *sanatio in radice.* Most of the bishops in the United States, if not all, possess the cumulative power as regards "simple" dispensation (see De Becker, 2d ed., p. 313), although this does not appear from any of the four Forms, I, C, D, and E, granted to them; while they do not appear to have any permanent faculty for granting a *sanatio in radice* cumulatively. The same author, De Becker (p. 372, n. 1), mentions that an American prelate asked the faculty but did not obtain it. However, the general principle, that the authority of giving a *sanatio in radice* for a given impediment does not avail when another impediment also exists, admits of some exceptions, as appears from an answer given by the Holy Office (August 18, 1897). The question was asked: "*Utrum concurrente aliquo impedimento dirimente secreto seu fori interni cum alio impedimento, sed publico, necessaria*

*sit ad dispensationem specialis cumulandi facultas?*" Response: "*NEGATIVE et detur Decretum* 31 *martii* 1872 *in Coimbaturen . . . quod sic se habet: SSmus Dominus declaravit generatim prohibitionem concedendi absque speciali facultate dispensationes quando in una eademque persona concurrunt impedimenta matrimonialia non extendi ad eos casus in quibus, cum impedimento natura sua publico, aliud occurrit impedimentum occultum seu fori interni.*"

2. The foregoing faculty (Article 6) extends to all the canonical impediments for which the power of dispensing was granted to all bishops under the decree of February 20, 1888. Under this decree all ordinaries were empowered to dispense in any ecclesiastical impediment, except priesthood and affinity in *linea recta ex copula licita*, when the parties to be dispensed had been living in concubinage or had contracted a civil marriage, provided that one of the parties was so sick as to be in very great danger of death, "*ægrotos in gravissimo mortis periculo constitutos*," and provided also that there was no time to have recourse to the Holy See for such dispensation. That by Article 6 the bishops of the United States possess the power of dispensing *in radice* under the circumstances just mentioned, is evident from the answer of the Holy Office (August 22, 1906) to the first *quæsitum* proposed by the bishop of Covington: "*Quomodo intelligi debet expressio 'Super quo, ex Apostolicæ Sedis Indulto, dispensare possit'? Utrum nempe solos casus Indultorum quinquennalium* (*seu particularium*) *contineat, an etiam omnes casus Indulti generalis a Rom. P. Leone XIII omnibus Ordinariis concessi die* 20 *Feb. a.* 1888 *quoad concubinarios, quorum unus versatur in periculo mortis adeo ut, vi prædictæ facultatis Episcopi sanare valeant in radice omnia matrimonia pro quibus reliqui Ordinarii facultatem*

*habent simplicem concedendi dispensationem, supposito utique quod adsit species seu figura quædam matrimonii.*" The answer was: "*Facultatem Art.* 6, *formulæ D, extendi posse ad casus Indulti diei* 20 *Febr.* 1888, *servatis ejusdem Indulti clausulis, facto verbo cum SSmo.*" It does not, however, follow from this answer that the bishops have the cumulative power of dispensing *in radice* in the impediments referred to in the decree of 1888, unless in the cases excepted by the decree of the Holy Office (August 18, 1897) cited above. It is not certain that the authority given by the decree of 1888 conveys any cumulative power, even for "simple" dispensations. For opposite opinions on this particular question, the reader may consult De Becker, p. 303 and 304: Wernz, "Jus Decretalium," vol. 4, n. 617, n. 67. The point here in controversy has not any practical importance for those who, like most, if not all the bishops of the United States, have received an *indultum cumulandi;* but as has been already remarked, this *indultum cumulandi* refers only to "simple" dispensations, not to dispensations *in radice.*

3. It is now quite certain that the *potestas sanandi in radice* conferred upon the bishops of the United States is not confined to occult impediments, as some writers erroneously held. There are two express declarations of the Holy See given for this country upon this question. The first was given to the bishop of Belleville on May 8, 1889. There was a case proposed, that of a Catholic having got married to an infidel before a civil magistrate without a dispensation in *disparitas cultus.* After this marriage, invalidly contracted, the Catholic party knows that the infidel consort will not accept the conditions required for obtaining a dispensation in *disparitas cultus* and asks for a *sanatio in*

*radice.* The question proposed under these circumstances was: "*An Episcopus utens facultatibus extraordinariis in formula D contentis sanare valeat in radice matrimonium in casu, an insistere ut a parte infideli pars Catholica separetur?*" Response: "*Ad primam partem dubii AFFIRMATIVE: hoc enim in casu ad partis Catholicæ spirituali saluti consulendum sanatio in radice indulgeri solet. Pars vero Catholica promittere debet se pro viribus curaturam observantiam legum ecclesiasticarum, conjugis infidelis conversionem ac Catholicam prolis educationem. Ad secundam partem: pendere ex circumstantiis particularibus.*" There is also a response of the Holy Office to the archbishop of Cincinnati (June 20, 1892) in a *dubium* he proposed regarding the validity of a *sanatio in radice* he had granted. The marriage had been invalid on account of *disparitas cultus* and the infidel party refused to fulfil the required conditions, while the Catholic party promised to do whatever could be done for the Catholic education of the offspring. "*Quatenus urgeret necessitas, consensus perseveret, et impositum fuerit matri onus baptismi et educationis prolis totis viribus curandæ potuissè uti facultatibus.*" In both cases there was question of a public impediment, *viz.*, *disparitas cultus,* which, though it may not happen to be commonly known as existing in a particular instance, is of its own nature public. Hence the power of dispensing *in radice* possessed by our bishops is not limited to occult impediments. This also is manifestly shown from the answer of the Holy Office to the bishop of Covington already quoted, in which it is declared that those who have the faculty in Article 6 can dispense *in radice* in all the impediments, for which the ordinaries throughout the Church received authority to grant a "simple" dispensation according to the decree of

1888. Many of those impediments are public in the theological sense of the term, such as consanguinity, affinity from lawful wedlock, etc.

4. There is another class of cases in which by Article 6 the bishops of this country can grant a dispensation *in radice, viz.*, when a marriage is invalid on account of a divine impediment and this impediment afterward ceases; the marriage may be validated from the time of the cessation of that impediment. There was a celebrated case called "*Casus Parisiensis*," which was settled by the Sacred Penitentiary April 25, 1890. Two persons, one of whom was a Catholic female of the diocese of Paris, were validly married, but after a civil divorce was obtained she contracted a second marriage with a Catholic while the first husband was still living. After his death she strove to have her second marriage revalidated *coram Ecclesia;* but the husband refused, alleging that for him a civil contract was sufficient. Then she besought the Holy See to grant a *sanatio in radice*. which was conceded. Now under Article 6, Form D, a *sanatio in radice* can be effected under similar circumstances, when it appears that the consent of each consort persevered from the time that the matrimonial contract, which was invalid by reason of the impediment of *ligamen,* was entered into. This is apparent from a response of the Holy Office to one of the *dubia* proposed by the bishop of Covington in the decree of 1906 regarding the interpretation of Article 6. It was asked: "*Utrum adhuc sit locus facultati si ambæ quidem partes cognoscunt nullitatem matrimonii sed una earum adduci non potest ad renovandum consensum.*" The response to this question was: "*Negative, nisi constet verum datum fuisse consensum sub specie matrimonii et eumdem ex utraque*

*parte perseverare.*" When, therefore, the condition here expressed is present, *i.e.*, the matrimonial consent continued by both parties, the faculty under Article 6 may be exercised. Some authors are of opinion that, in the consent given when the divine impediment still existed, there is a natural force which produced its effect as soon as that impediment ceased provided that there was no other diriment impediment existing; while others think that the consent originally given with the existence of the divine impediment possessed no force whatever, but that as soon as that impediment ceased, the parties could express matrimonial consent in words or by conjugal intercourse, which consent, although invalid from clandestinity or some other ecclesiastical impediment, could be cured by the action of the Church so that the marriage would become valid at the moment such action was applied without both parties being required previously to know of such proposed application.

5. It is now time to consider the restrictions placed upon the exercise of the faculty in Article 6. These are indicated in the words in which it is conveyed: "*Magnumque fore incommodum requirendi a parte innoxia renovationem consensus, monita tamen parte conscia impedimenti de effectu hujus sanationis.*" There are two conditions here set forth. The first is when a great difficulty or grave inconvenience would arise from requiring each party to renew consent; for instance, if one of the parties, when asked, would likely refuse to renew consent, or even if great dissension would be reasonably apprehended from inducing both to renew consent; otherwise the faculty could not be exercised. The second condition required for the exercise of this power is that before the *sanatio* is applied, one of the parties

should be aware of the impediment and of the *sanatio* to be exercised as well as of its effects. The necessity of this condition is clear from a response to the bishop of Covington in the decree of 1906. It was asked whether the faculty (Art. 6) could be exercised, "*si ambæ hic et nunc eam (nullitatem matrimonii) ignorant, dummodo postea una pars moneatur de sanatione obtenta ejusque effectu.*" The answer was, "*Negative.*"

From this answer it appears that if both parties be ignorant of the nullity of their marriage, this faculty can not be exercised, even though one of the parties be admonished of the *sanatio* having been applied and of the effect of the *sanatio;* in other words, one of the parties should be aware of the invalidity of the marriage previous to the exercise of the *facultas sanandi.* That this is the correct view, is manifest not only from the response of the Holy Office, but likewise from the very words of the faculty, "*monita tamen parte conscia impedimenti de effectu hujus sanationis.*" It is not, however, necessary that one of the parties should have been for a long time aware of the existence of the impediment or of the *sanatio* to be applied. This knowledge may have been obtained immediately before the act of validation takes place. Besides the two conditions just mentioned, there must of course be also present those conditions which are required for every dispensation *in radice*, even when granted immediately by the Sovereign Pontiff. These are: first, that a matrimonial consent was formerly given such as would have sufficed for a valid marriage, if no impediment existed; second, the continuance of this consent by each party until the act of revalidation takes place; third, that there be a grave reason for employing this extraordinary means of revalida-

tion rather than the ordinary means by simple dispensation and mutual renewal of consent; and fourth, that there be question of dispensing only in an ecclesiastical impediment.

6. When a priest is called upon to send a petition to the bishop for a *sanatio in radice,* he should send in writing a statement of the case, setting forth the impediment on account of which the marriage was invalid, whether the marriage was entered into with or without the knowledge of the diriment impediment by the contracting parties; also the reasons for a revalidation, such as scandal or danger of incontinence which would arise from a separation of the parties; impossibility or great difficulty in getting a renewal of consent from both parties. The bishop, if satisfied with the reasons, may pronounce the act of revalidation, which ought to be communicated to the party aware of the impediment and should be recorded in some document to be preserved.

In conclusion it may be remarked that this faculty *sanendi in radice,* like all the faculties called habitual, which are granted to bishops by the Holy See, such as the faculties contained in the Forms I, C, D, and E, can be validly exercised by the vicar-general, even without any special deputation for this end, since the vicar-general possesses all the habitual faculties granted to the bishop whose vicar-general he is; but for the licit exercise of such faculties the vicar-general is required to show due subordination to his bishop. See Decree of the Holy Office to the bishop of Covington, ad quintum. — End of Note.

## CHAPTER XIV

### DE DEBITO CONJUGALI

1. Verba S. Pauli proœmii locum teneant nobis hanc fœdam materiam breviter tractaturis: "Uxori," inquit Apostolus, "vir debitum reddat, similiter autem et uxor viro. Mulier sui corporis potestatem non habet, sed vir; similiter autem et vir sui corporis potestatem non habet, sed mulier. Nolite fraudare invicem, nisi forte ex consensu ad tempus, ut vacetis orationi; et iterum revertimini in idipsum, ne tentet vos Satanas propter incontinentiam vestram." [1]

Proinde non tantum licitus est usus conjugii sed alteri parti serio et rationabiliter petenti est ex justitia debitum sub gravi reddendum.

Quod quamvis sit certissimum admittuntur tamen causæ excusantes ab hac obligatione, ita ut nulla sit obligatio reddendi debitum quando reddi non possit sine periculo vitæ, morbi gravis, vel quando non rationabiliter petatur, ut ab amente aut ebrio, vel petatur nimis frequenter, ut si pluries in eadem nocte. Etiam semi-ebrio petenti videtur licitum, præsertim propter periculum gravium defectuum tum corporalium tum moralium in prole forte gignenda, debitum denegare nisi propterea timeantur rixæ, discordiæ, et incontinentia ex parte petentis.

[1] 1 Cor. vii. 3–5.

Dictum est in his circumstantiis nullam adesse obligationem debitum reddendi, imo per se illicitum esset debitum reddere cum proximo periculo vitæ vel sanitatis. Attamen si morbus esset diuturnus nec proxime tendens ad mortem, qualis est syphilis, permittitur sano debitum reddere cum periculo infectionis ad incontinentiam vitandam vel ad amorem conjugalem fovendam. Major difficultas habetur quando judicio medici proles gignenda morti esset matri. Tales vero casus non sunt facile admittendi, et quidem medici judicium de periculo vitæ facilius pronunciant eo quod mulieres illud aucupantes videant. Nisi igitur casus sit omnino specialis, tuto confessarius consilium mulieri tale judicium medici alleganti dabit ut viro placere studeat ac cum magna fiducia Deo se committat.

Quum conjuges sibi invicem debitum reddere teneantur, patet eos ad simul cohabitandum regulariter etiam teneri, nisi quando necessitas id non patitur vel quando ex mutuo consensu sine periculo incontinentiæ et sine scandalo aliter fit.

Conjugibus senibus vel debilibus qui sæpius copulam nonnisi imperfecte exercent non est denegandus usus matrimonii dummodo aliqua sit spes eos posse rite actum perficere.

2. Quid liceat quid non liceat conjugibus sequenti regula generali continetur: Quod utile est ad actum conjugalem exercendum licet; quod est contra prolis generationem vel tendit ad illam impediendam est graviter illicitum; quod non est contra prolis generationem, quamvis sit præter illam, saltem non est graviter illicitum.

Unde resolves: Licet conjugi tactibus et aspectibus impudicis sese ad copulam excitare, et post vir se retractavit licet uxori tactibus se excitare ad delectationem

veneream completam. Copula sodomitica et copula incœpta sed abrupta cum effusione seminis extra vas mulieris graviter illicita est. Si autem experientia constat conjugibus se posse sine proximo periculo pollutionis copulam incœptam abrumpere, non videtur hoc esse mortale si uterque consentiat. A fortiori alii tactus et aspectus turpes sine proximo periculo pollutionis a conjugibus admissi non videntur mortalia, et ab omni peccato excusantur si ex justa causa exercentur, ut ad affectum conjugalem fovendum.

3. Peccatum grave contra naturam et finem matrimonii committit vir qui copula imperfecta sese voluntarie ab uxore retrahit et extra vas seminat. Ex facto Onan vocatur peccatum onanismus.[1]

Constat autem esse peccatum grave ex Sacra Scriptura ex eo quod frustratur finem principalem matrimonii, et tendit in ruinam generis humani. Constat etiam ex pluribus responsis SS. Congregationum. Moraliter nil refert quo medio peccatum hoc frustratæ naturæ committatur, sive instrumento quodam, sive involucro, sive lotione vasis mulieris post copulam, sive mere retractione viri ante seminationem. Si mutuo consilio et consensu conjugum tale quid fiat uterque graviter peccat.

Si tamen actus viri onanisticus uxori displiceat, quæ etiam eum inducere ad rem honeste perficiendam frustra tentavit, hæc non videtur prohibenda quominus debitum viro petenti reddat vel etiam ex gravi causa postulet. Ipsa enim materialiter tantum cum peccato viri cooperatur, quæ cooperatio ex gravi causa est licita. Habetur vero gravis causa tum ex parte viri ne offendatur, tum ex parte uxoris quæ cum periculo incontinentiæ non est privanda

[1] Gen. xxxviii. 9.

juribus suis maritalibus. Licet igitur mulieri etiamsi vir onanistice agat, veneree delectari in usu matrimonii, imo licet ei postquam vir sese retractavit excitare sese tactibus ad completam satisfactionem si hanc nondum sit experta.

Confessarii regulariter conjuges interrogare non debent de modo quo jura maritalia exerceant. Si tamen conjux dubia proponat de liceitate onanismi confessarius doctrinam Catholicam breviter ei declarare debet. Imo si suspicionem fundatam habet conjuges sive bona sive mala fide onanistice agere eos monere debet, cum de gravi peccato valde nocivo ipsis conjugibus et societati humanæ agatur. Conjux qui doctrinæ Catholicæ de hac re acquiescere nolit per se absolutionis est incapax.

4. Dummodo copula rite perfici possit nullus situs in ea exercenda graviter est illicitus, et situs non naturalis cohonestatur ita ut ne venialiter quidem sit illicitus dummodo justa aliqua causa habeatur.

Vetere lege accessus ad uxorem prohibebatur menstruorum et purgationis tempore, imo antiqua lege ecclesiastica similis vigebat prohibitio. Videtur dicendum illas leges esse positivas nec amplius Christianos obligare. Variæ sunt Doctorum sententiæ circa liceitatem talis accessus. Rationes quas afferebant plures ut actus illiceitatem demonstrarent fabulis nitebantur, attamen scientia physiologica comprobat sententiam juxta quam ob statum nerveum mulieris menstruorum et purgationis tempore sub veniali saltem est viro abstinendum nisi justa causa excusat. Idem dicendum videtur de tempore prægnationis, imo si esset copula periculo proximo abortus sub gravi tunc esset abstinendum. Vix tamen constare potest de tali periculo unde obligatio abstinendi urgeri non valet.

Probabilis videtur sententia plurium juxta quam tactus

impudici quos conjux secum exercet altera parte absente dummodo nullum sit periculum proximum pollutionis non sunt peccata mortalia. Ipse status matrimonialis, aiunt, reddit tales actus minus indecentes, ita ut quod apud solutos sit grave, apud conjugatos sit tantum veniale.

Nec delectatio morosa de copula habita vel habenda, secluso iterum periculo proximo pollutionis, videtur sub gravi conjugibus prohibita. Imo delectatio mere rationalis de objecto licito, qualis est copula conjugibus, ne veniale quidem esset; attamen practice delectatio de actu conjugali vix mere rationalis esse poterit, quatenus naturaliter excitat sensus et membra. Unde delectatio morosa de copula habita vel habenda sub veniali saltem regulariter etiam conjugibus prohibetur.

Copulam cum conjuge exercere cum mente adulterina, cogitando de alia persona præter conjugem, grave est peccatum propter mentem adulterinam.

# BOOK IX

## CENSURES

### Part I

### CENSURES IN GENERAL

### CHAPTER I

#### THE NATURE OF AN ECCLESIASTICAL CENSURE

1. We here understand by a censure a spiritual and remedial penalty by which a baptized and contumacious delinquent is deprived by ecclesiastical authority of the use of certain spiritual advantages. It differs from other penalties, such as degradation, which are also spiritual and inflicted by the Church, in that a censure has in view the correction and amendment of the delinquent, while other penalties have chiefly in view the common good to be procured by the punishment and repression of crime. The Church has jurisdiction only over those who are baptized, and she punishes by censures only those of her children who have done wrong with their eyes open, with knowledge of the wrongfulness of their action and of the spiritual censure by which the Church punishes it.

A censure does not and can not deprive a man of all the spiritual advantages which he may possess. There are some spiritual gifts in man's possession which depend only on his personal relations with God, such as sanctify-

ing grace, and the supernatural virtues and gifts which accompany it. These may adorn the soul of one who is not baptized, and they are not possessed by all members of the Church. There are, however, other spiritual privileges which a Christian enjoys through membership with the Church of God. Among these theologians distinguish those that are internal, external, and mixed. Internal comprise the special providence and helps which God grants to the members of His Church because they belong to His Spouse who is continually interceding for them. External are the society and special charity which binds the members of the Church to each other. Mixed are the participation in the same sacraments and sacrifice, the common suffrages, satisfactions, and indulgences, which the children of the Church in communion with her enjoy. According to the common opinion, excommunication deprives the delinquent of all these privileges, it puts him outside the communion of the faithful, and consequently leaves him without the benefits of union. The other two censures, suspension and interdict, deprive him at least of some of those benefits, as of their nature they are limited in their effect. There are, however, some theologians who with Suarez deny that a censure deprives a man of the merely internal advantages which membership with the Church confers.

2. With reference to the effects produced by them, censures are of three kinds: excommunication, suspension, and interdict. With reference to the manner in which they are inflicted, they are said to be *a jure*, or *ab homine*. The former are imposed by a stable and permanent law, the latter by way of particular precept or sentence. Sometimes a censure is incurred by the very fact of committing

a crime, without any declaratory sentence of a judge; it is then said to be *latæ sententiæ*. Sometimes it needs the intervention of a judge and is said to be *ferendæ sententiæ*.

3. Certain conditions must be fulfilled in order that a censure may be incurred:

*a*. As it is a serious penalty, and a serious penalty can only be inflicted for a grave fault, a censure can only be incurred by one who has committed a mortal sin.

*b*. The Church does not judge of what is merely internal, and so the fault which is punished by censure must be grave externally as well as internally. A slight blow given to a cleric, which does not constitute a serious injury, does not involve excommunication incurred by those who violate the privilege of the canon, even though the act were accompanied with mortal hatred.

*c*. Penalties must be interpreted strictly, and therefore the crime which is punished by censures must be completed, not merely attempted.

*d*. Inasmuch as a censure is remedial and inflicted on the delinquent for his correction and amendment, it can not be incurred for a crime which is altogether past, and which has left no traces behind it. Sometimes suspension or interdict may be inflicted in punishment of such crimes, but then they are inflicted for a definite period, or forever, and become pure penalties, not censures.

*e*. There must be contumacy in order that a censure may be incurred, or, in other words, the delinquent must be conscious at the time that he is committing a crime which is punished by the Church by censure. It follows from this that a censure can not be inflicted *ab homine* by a particular sentence without previous admonition, and this should ordinarily be in writing so as to be capable

of proof. In censures inflicted *a jure* or *ab homine* by a general precept which is of the nature of a law, no special admonition is required, as the law itself is a sufficient admonition. Nor is an admonition necessary when suspension or interdict are inflicted by way of mere penalty.

4. It is of faith that the Church has the power of inflicting censures. It is contained in the general power of binding and loosing granted to the Church by her divine Founder. This power is exercised by all ecclesiastical prelates who have jurisdiction in the external forum, unless their authority has been restricted. The Pope and a general council have jurisdiction over the whole Church, and they can bind all the faithful by their laws and censures. A bishop or his vicar-general can inflict censures on their subjects, as can regular prelates on theirs. A parish priest has no jurisdiction in the external forum, and can not as such impose censures, nor can laymen, nor women.

A bishop can not lawfully exercise contentious jurisdiction outside his diocese, and consequently he can not inflict censures outside his diocese when the case requires a judicial process. If the case does not require any judicial process, he may impose a censure on a guilty subject even when he is outside his diocese.

A bishop within his diocese may punish with censure a subject who is now outside the diocese on account of a crime which was committed within the diocese, and even on account of a crime which has been committed outside if it had reference to the diocese. And so a parish priest who is absent from the diocese and refuses to come to synod, or who is taking too long a holiday, may be punished by censure. The more probable opinion holds that a sub-

ject who violates a precept imposed under censure while he is outside the diocese incurs the censure, though St. Alphonsus admits that the opposite is probable. The jurisdiction of Superiors over regulars is personal, and these certainly incur censures imposed on them wherever they may be at the time when it is imposed. Regulars belonging to mendicant Orders and members of the Society of Jesus have a special privilege granted by the Holy See, by which they can not be put under censure by any bishop, even when they do wrong in matters in which their general exemption is of no avail, and in which they are subject to the bishop. In three cases, however, these Religious may be punished by episcopal censure, notwithstanding their special privilege. Gregory XV permitted this in case they preach in churches not their own without the bishop's license, or in their own without asking for his blessing, or against his command; Innocent X added to this the case of disobedience with reference to hearing confessions; and Urban VIII added the case of hanging sacred pictures painted in an unusual or scandalous manner.

5. In order to incur a censure, the delinquent must be subject to the authority which imposes it. Strangers, therefore, do not incur the particular censures which bind in the place where they are staying for a short time. If strangers, however, violate some provision of the common law which for such violation imposes a censure *ferendæ sententiæ*, the bishop of the place may inflict this on them. Even when they offend in other matters, the local ordinary may punish them by other penalties, and if they prove contumacious, they may be put under censure by him.

For one and the same crime a delinquent only incurs one censure of several, which may perhaps have been

inflicted by the same authority. Thus one who teaches an heretical proposition which has been condemned by the Holy See under pain of excommunication, incurs the censure specially reserved to the Pope, but not that also which is simply reserved to the Pope by the constitution *Apostolicæ Sedis*. On the other hand, a delinquent may incur several censures for the same crime imposed by different authorities, just as he may be punished by several censures for different crimes or for repetitions of the same.

6. Grave fear and ignorance prevent contumacy, and therefore hinder one who commits a crime under their influence from incurring any censure by which such crime is punished. If, however, the ignorance be crass or supine, it will not excuse from grave sin or contumacy, and so the censure will be incurred. But if the censure is inflicted on those who *knowingly, rashly, with rash daring,* or *presumption,* commit a crime, full knowledge is required in order to incur the censure, and not only crass but probably even affected ignorance will prevent its being incurred.

## CHAPTER II

### ABSOLUTION OF CENSURES

1. When a censure has been incurred, it does not cease as a rule merely by lapse of time or on the correction and amendment of the delinquent. The delinquent must obtain absolution of the censure from one who is competent to give it. In some cases, however, a censure is imposed as long as certain conditions last, and then on the termination of those conditions the censure lapses without absolution. Thus by the decree of the Congregation of Bishops and Regulars (November 4, 1892), regulars in sacred Orders who are expelled or dismissed by their Superiors remain suspended until the Holy See provides for them, and they find a bishop to receive them.

Any confessor may absolve from censures inflicted by law and not reserved to the Holy See or to the bishop. Censures, too, which are imposed *ab homine* but by a general precept or ordinance are in the same category, and may be absolved by any confessor unless they are reserved.

Absolution for a reserved censure must be sought from him to whom it is reserved, or from his delegate. Similarly, absolution from a censure inflicted *ab homine* by a particular precept must be obtained from him who inflicted it, or from his superior, or successor in office, or from some one delegated by one of these to grant absolution.

Bishops and priests with missionary faculties in missionary countries receive the amplest powers to absolve from almost all censures that are inflicted by the common law of the Church, even though many of them are *per se* reserved to the Holy See or to the bishops. As we saw in the Book on Penance, two cases, the attempted absolution of an accomplice in a grave sin of impurity and the false accusation of solicitation, are generally excepted, and in a more special way reserved to the Holy See.

When a general faculty to absolve from censures is granted, it will avail both for the external and for the internal forum.[1] If it is granted only for the internal forum, of itself it is of no avail for the external. Absolution granted for the internal forum will remove the censure as far as the relations between the soul and God are concerned, and it may also reconcile the delinquent with the Church and thus serve for the external forum as well, if the prelate to whom the case belongs is willing so to accept it, and there is no scandal to be repaired. If the case has been brought before the judge in the external forum, or if there is danger of this, one who has power to absolve only in the internal forum should not interfere.

2. Any cleric with ordinary or delegated jurisdiction for the case may absolve from a censure; neither priestly Orders nor episcopal approbation is required. Although absolution should ordinarily be given by word of mouth, and in presence of the delinquent, still it may validly be conveyed to one who is absent by letter. A censure may be removed even against the will of him who has incurred

[1] If a confessor in ignorance of the reservation absolves from a sin and censure annexed to it, the absolution is valid, unless the censure is *ab homine*, or reserved to the Holy See *specialissimo modo*. C.J.C., can. 2252.

it, and sometimes even the dead are absolved that they may not be deprived of Catholic burial. A person under several censures may be absolved from one while he still remains subject to the others, as the removal of one has no necessary connection with the removal of the rest. Absolution from censures should be given before absolution from sins, although if the order is inverted by mistake this would not affect the validity of the absolution. No special form is required for the validity of absolution from censures, but in the confessional the priest should make use of the ordinary form in the Ritual by which both censures and sins are absolved.

# Part II

## DIFFERENT KINDS OF CENSURES

### CHAPTER I

#### EXCOMMUNICATION

1. Of all the penalties which the Church can inflict, excommunication is the most severe, and it virtually contains the others. It deprives the delinquent of all the advantages which he possessed as a member of the Church, and puts him outside the communion of the faithful. According to the ancient discipline of the Church, no excommunicated person could hold any intercourse with the faithful, nor could the faithful hold intercourse with him, but at the close of the Middle Ages, when heresy became more common, it grew to be impossible to maintain the ancient rigor, and Martin V introduced an important mitigation in the law. By the decree *Ad evitanda*, he distinguished between those under censure who were still to be avoided and those who were to be tolerated. All who were excommunicated by name, and at the same time specially denounced by name, together with all who notoriously violated the privilege of the canon by striking clerics, were still to be avoided; all others were to be tolerated. By this concession Catholics might without scruple, as far as concerned the censure, henceforth have intercourse with persons under censure who were tolerated. The concession was not, indeed, made directly in favor of

those under censure, but these could not fail to benefit indirectly by the relaxation in the law that had been granted to the faithful. The tolerated as well as those to be avoided were still theoretically subject to the former disabilities, but custom made a distinction between them in several important respects.

By the ancient discipline one of the faithful who held unlawful intercourse with one who was under excommunication himself incurred the minor excommunication, but this penalty has ceased to exist since the promulgation of the constitution of Pius IX, *Apostolicæ Sedis*, where no mention is made of it.

2. The effects of excommunication as mitigated by modern discipline may be enumerated as follows:

*a*. It deprives the excommunicated person of the use of the sacraments, sacramentals, and indulgences of the Church, so that whether tolerated or not he can not lawfully receive them, and if he does so unabsolved he commits grave sin.

*b*. It deprives at least those who are not tolerated of the public suffrages and prayers which the ministers of the Church offer in her name. To pray publicly in the services of the Church or to offer Mass publicly even for the tolerated except for their conversion seems still in general forbidden. Special exceptions, however, are sometimes made in favor of non-Catholic rulers. According to a very probable opinion it is allowed in private to offer Mass for those excommunicates who are tolerated, inasmuch as the decree of Martin V allowed Catholics to hold communion with them and so to offer Masses and suffrages for them. No one is forbidden, but rather all are urged to pray in private for the excommunicated.

*c.* An excommunicated priest can not lawfully administer the sacraments. However, in extreme necessity even one who is to be avoided may administer them, and one who is tolerated may do so if the faithful request it of him.

*d.* One who is to be avoided can not lawfully be present at the liturgical offices of the Church, but those who are tolerated are not only allowed by modern custom but even urged to come to Catholic services so that prejudice may be removed and they may be better disposed toward the Church.

*e.* Excommunication renders null and void presentation to a benefice or the conferring of an ecclesiastical dignity with jurisdiction annexed to it.[1] It also makes one incapable of receiving the benefit of a papal rescript, and therefore such favors usually contain a clause absolving the recipient from any censure he may have incurred in order to secure the validity of the favor conferred on him.

*f.* One who is to be avoided as excommunicate can not hold any office in an ecclesiastical court. Roman law made him incapable of holding the office of judge or advocate, of being a witness, or even a guardian to a minor, or the executor of a will. Such disabilities are not recognized in modern civil legislation. A tolerated excommunicate was not *ipso facto* excluded from holding office in an ecclesiastical court, but legal exception might be taken to him.

*g.* An excommunicate who is to be avoided is deprived of all ecclesiastical jurisdiction both of the internal and of the external forum. One who is tolerated retains any

[1] At least after a declaratory or condemnatory sentence unless special mention of the censure is made in the rescript. C.J.C., can. 2265, sec. 2.

jurisdiction which he possessed as long as he retains his title, but he can not lawfully exercise it except at the request of the faithful who are allowed to communicate with him.

*h.* Excommunication deprives a person of the right to ecclesiastical burial in consecrated ground. If, however, before death he gave signs of repentance, and of a wish to be reconciled with the Church, absolution may be given after death and the corpse may then receive Christian burial.

*i.* Those who were to be avoided as being under excommunication were also deprived of civil society and social intercourse. This prohibition of social intercourse was only binding under pain of venial sin, and many reasons of no great weight were held to excuse its violation even from venial sin. The conditions of modern society have increased and added weight to those excuses so that practically the prohibition of social intercourse and civil society with excommunicates has ceased to be of importance.[1]

Beside the foregoing effects immediately produced by excommunication, there are others more remote. If the person under excommunication violates the censure by unlawfully and solemnly exercising sacred Orders, he incurs irregularity, and if after due admonitions he takes no steps to be released from the censure but remains in it for a whole year, he becomes suspect of heresy.

[1] The new Code lays down the rule that the faithful should not hold civil intercourse with excommunicated persons, who as such are to be avoided, without reasonable cause. C.J.C., can. 2267.

## CHAPTER II

### SUSPENSION

1. Suspension is a censure by which a cleric is deprived of the use of some ecclesiastical power which he has by reason of his Orders, office, or benefice.

This censure, then, differs from the rest in that it is inflicted only on clerics whom it deprives of the lawful exercise of some portion or of the whole of the ecclesiastical power which they possess. A suspended priest may hear Mass and receive the sacraments, and he retains the Order or office from which he is suspended, but he can not lawfully exercise that Order or office as long as he is under censure.

Suspension may be partial, as when it deprives the delinquent of the exercise of some sacred Order, or office, or of the administration and fruits of his benefice; or it may be total and embrace all these ecclesiastical powers. When a cleric is simply suspended without any special limitation he is understood to be totally suspended from all sacred Orders, the exercise of his office, and the fruits of his benefice.

Suspension *ab homine*, inflicted for the perpetration of a crime, should ordinarily be imposed after the crime has been proved judicially. However, the Council of Trent [1] permitted prelates to suspend their clerics on account of

[1] Sess. xiv, c. 1, de ref.

a secret crime and without judicial process. If they use this right, they are said to suspend the delinquent *ex informata conscientia;* they are not bound to make known the grounds of their action to the delinquent himself, but they should be prepared to submit them to the Sacred Congregation if he have recourse to Rome, as he has a right to do, though he has no right to a strict appeal.[1]

Suspension inflicted for life, or for a crime which is altogether past and done with, or at the will and good pleasure of the Superior, is not a censure in the strict sense, but a mere penalty inflicted in punishment for crime.

2. A suspended person who exercises an act prohibited him by the censure commits grave sin, and if he solemnly exercises sacred Orders after being suspended from them he incurs the penalty of irregularity in addition. An act of jurisdiction on the part of one who is publicly suspended and who is not tolerated would be invalid; such an act on the part of one who is tolerated would always be valid, and even lawful if it were exercised at the request of the faithful who have the right to ask it of him.

[1] Instruct. S.C. de P.F., October 20, 1884.

## CHAPTER III

### INTERDICT

1. INTERDICT is a censure which prohibits the use of liturgical offices, some sacraments, and ecclesiastical burial. It differs from excommunication and suspension, even when the effects are similar, in that excommunication deprives the delinquent of the use of the sacraments, for example, inasmuch as that use is a communication with the faithful, and suspension deprives the delinquent of the exercise of ecclesiastical power in the administration of the sacraments, while interdict forbids their use inasmuch as they are sacred actions and objects of which for just reasons the delinquent is deprived.

An interdict is local, personal, or mixed, as the prohibition immediately affects the place, certain persons, or both.

It is general or special as it affects the whole of some country or body; or only some particular place or person, physical or moral.

It is total or partial as it deprives of liturgical functions, some sacraments, and ecclesiastical burial, or only of some of these spiritual advantages.

In spite of the prohibition of liturgical functions, these may be celebrated with open doors on certain more solemn festivals, provided that those whose crime was the occasion of the interdict do not approach the altar. Mass, too,

may be said during an interdict with closed doors in churches where the Blessed Sacrament is reserved, in order that it may be renewed for the needs of the sick.

The ordinary distribution of holy communion, the nuptial blessing, the ordination of clerics, and the administration of Extreme Unction are forbidden; the sacraments of Baptism, Confirmation, Penance, Marriage without the nuptial blessing, the Viaticum, and even Extreme Unction when another sacrament can not be administered, are not forbidden during an interdict.

Ecclesiastical burial may not take place in a consecrated cemetery which is under interdict, nor may interdicted persons be buried in consecrated ground.[1]

2. The violation of an interdict by doing what it forbids is a grave sin, and a cleric who violates a personal interdict by the exercise of an action belonging to sacred Orders or who performs such an action in a place which is interdicted by name incurs irregularity. There are also certain other penalties inflicted for the violation of an interdict, as we shall see when treating of the constitution *Apostolicæ Sedis*.

[1] The new Code permits burial in a cemetery under interdict, but without any ecclesiastical rites. C.J.C., can. 2272.

## CHAPTER IV

### ECCLESIASTICAL PENALTIES

1. Certain ecclesiastical penalties resemble censures in some respects, and it will be convenient to say a word about them here. Deposition is an ecclesiastical penalty by which a cleric as a punishment for grave crime is forever deprived of the exercise of his Orders, or of his office and the use of ecclesiastical jurisdiction, or of his benefice; or at the same time of the exercise of his Orders, of his office and jurisdiction, and of his benefice. It differs from a censure in that it is vindictive not remedial, and it does not endure merely until correction, amendment, and absolution; but of itself it is perpetual. The deposed cleric retains the privileges of the forum and of the canon.

2. Degradation is a more severe penalty than deposition, inasmuch as it reduces the cleric to the state of a layman as far as it is in the power of the Church to do, and deprives him of all clerical offices, rights, and privileges. Degradation is inflicted by the bishop in punishment of grave crimes committed by clerics who are incorrigible, by depriving them solemnly of their vestments and insignia of office, and handing them over to be dealt with by the secular arm.

3. Cessation from divine offices is ordered in a place in punishment for some grave crime that has been therein committed. It differs from a local interdict in that it

altogether forbids the administration of the sacraments except such as are necessary, liturgical functions, and ecclesiastical burial.

4. By ecclesiastical burial is meant interment in consecrated ground with the rites of the Church. All Catholics who die in communion with the faithful have a right to ecclesiastical burial. If there is no consecrated ground in which they can be buried, the grave in which they are placed is blessed at the time of interment. As far as possible, Catholics should have a special cemetery of their own or a portion at least of the common cemetery assigned to them exclusively. In this a part should be left unblessed for the reception of the bodies of unbaptized infants and of those to whom Christian burial is to be denied. These are either such as are deprived of ecclesiastical burial because they died out of communion with the faithful, or those to whom it is denied in punishment of crime.

To the first category belong all who are not baptized, open and public heretics, schismatics, apostates, and those under excommunication, for "with those with whom we have not communicated when alive we do not communicate when dead." [1]

To the second class belong suicides, unless they killed themselves while out of their mind, and this the Church readily presumes, those who have been killed in a duel, those who did not make their Easter duties, and open and public sinners. No Catholic, however, should be refused ecclesiastical burial without the sentence of the bishop.

Those also, who of their own free will chose to be cremated and persevered in this choice till death, are denied eccle-

[1] c. 12, de sepulturis.

siastical burial. The Church's rites may be performed at the house and in the Church in favor of those who are to be cremated by the wish of another, but no sacred rites are permitted at the crematorium.[1]

Although cremation in itself is not intrinsically wrong, yet the Church for good reasons forbids it, and it is gravely sinful for a Catholic to take a formal part in the cremation of the body of a Catholic.

[1] S.O. December 15, 1886.

# Part III

## SPECIAL CENSURES

## CHAPTER I

### THE BULL "APOSTOLICÆ SEDIS" WITH COMMENTARY

In this part we will give the particular censures which are in force at the present day. Most of them are contained in the constitution *Apostolicæ Sedis,* issued by Pius IX, October 12, 1869, which it will be well to print in its entirety, adding a few notes by way of comment where they seem called for. We may warn the reader that the document is legal and highly technical, and that want of caution or knowledge may easily lead him to draw very wrong conclusions from the document.

### CONSTITUTIO SANCTISSIMI D. N.

QUA

### CENSURÆ LATÆ SENTENTIÆ LIMITANTUR

Pius Episcopus, Servus Servorum Dei, *ad perpetuam rei memoriam:*

Apostolicæ Sedis moderationi convenit, quæ salubriter veterum canonum auctoritate constituta sunt, sic retinere, ut, si temporum rerumque mutatio quidpiam esse temperandum prudenti dispensatione suadeat, Eadem Apostolica Sedes congruum supremæ suæ potestatis remedium ac providentiam impendat. Quamobrem cum animo Nostro iampridem revolveremus, ecclesiasticas censuras,

quae per modum latæ sententiæ, ipsoque facto incurrendæ ad incolumitatem ac disciplinam ipsius Ecclesiæ tutandam, effrenemque improborum licentiam coercendam et emendandam sancte per singulas ætates indictæ ac promulgatæ sunt, magnum ad numerum sensim excrevisse; quasdam etiam, temporibus moribusque mutatis, a fine atque causis, ob quas impositæ fuerant, vel a pristina utilitate atque opportunitate excidisse; eamque ob rem non infrequentes oriri sive in iis, quibus animarum cura commissa est, sive in ipsis fidelibus dubietates, anxietates, angoresque conscientiæ; Nos eiusmodi incommodis occurrere volentes, plenam earundem recensionem fieri Nobisque proponi iussimus, ut, diligenti adhibita consideratione, statueremus, quasnam ex illis servare ac retinere oporteret, quas vero moderari aut abrogare congrueret.

(*a*) Ea igitur recensione peracta, ac Venerabilibus Fratribus Nostris S. R. E. Cardinalibus in negotiis Fidei Generalibus Inquisitoribus per universam Christianam Rempublicam deputatis in consilium adscitis, reque diu ac mature perpensa, motu proprio, certa scientia, matura deliberatione Nostra, deque Apostolicæ Nostræ potestatis plenitudine, hac perpetuo valitura Constitutione decernimus, ut ex quibuscumque censuris sive excommunicationis, sive suspensionis, sive interdicti, quæ per modum latæ sententiæ, (*b*) ipsoque facto incurrendæ hactenus impositæ sunt, nonnisi illæ, quas in hac ipsa Constitutione inserimus, eoque modo, quo inserimus, robur exinde habeant; simul declarantes, easdem non modo ex veterum canonum auctoritate, quatenus cum hac Nostra Constitutione conveniunt, verum etiam hac ipsa Constitutione Nostra, non secus ac si primum editæ ab ea fuerint, vim suam prorsus accipere debere.

*a.* In doubt, therefore, this constitution must be interpreted strictly both because it deals with penalties and because the intention of the maker of the law was to limit, not to increase, the number of censures.

*b.* So that the constitution does not affect censures which are *ferendæ sententiæ*, nor of course those which belong to the special law of particular provinces, dioceses, or Religious Orders, but to the common law of the Church.

Each of the censures which follow is a law which prohibits the act of which it treats under pain of incurring the censure inflicted.

## Excommunicationes Latæ Sententiæ Speciali Modo Romano Pontifici Reservatæ

Itaque excommunicationi latæ sententiæ speciali modo Romano Pontifici reservatæ subiacere declaramus:

I. Omnes a christiana fide apostatas, et omnes ac singulos hæreticos, quocumque nomine censeantur, et cuius cumque sectæ exsistant, eisque credentes, eorumque receptores, fautores, ac generaliter quoslibet illorum defensores.

*Speciali modo.* — The censures in the first list are specially reserved because they can not be absolved by such as have only a general faculty to absolve from cases reserved to the Pope, nor by bishops when they are occult by virtue of the Chapter *Liceat,*[1] and those who are absolved in danger of death from these censures are bound in case of recovery afterward to present themselves before the Holy See and accept its commands.

*Apostatas* — Apostates are those who altogether fall

[1] Trent, sess. xxiv, c. 6, de ref.

away from the Catholic Faith whether they profess any other form of religion or not.

*Hæreticos.* — Heretics in this connection are those only who sinfully, internally and externally, reject some dogma proposed by the Church to be believed, though they know fully well that it is so proposed.

*Credentes.* — Those who express their belief that some false doctrine of heretics is true, or that in general apostates and heretics teach the truth.

*Receptores.* — Harborers of heretics, as such, to prevent them from being detected or punished.

*Fautores.* — Fautors of heretics are those who afford them help and assistance in matters touching their heresy.

*Defensores.* — Defenders of heretics are such as by word, in writing, or by deed defend their heretical teachings or their persons from capture and punishment.

II. Omnes et singulos scienter legentes sine auctoritate Sedis Apostolicæ libros eorundem apostatarum et hæreticorum hæresim propugnantes, nec non libros cuiusvis auctoris per Apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes, et quomodolibet defendentes.

*Scienter.* — Full knowledge of this law and of the fact of transgression is required in order to fall under this censure. Crass, and probably even affected ignorance will excuse from the censure.

*Legentes.* — Reading, not hearing, is forbidden under censure, and the quantity read must be considerable with reference to the intention of the law which is to preserve the purity of the Faith.

*Libros.* — A newspaper, pamphlet, or sermon, is not a book. Periodicals, however, come under the law.

*Propugnantes.* — To fall under this censure it is not sufficient if the book merely contain heresy; it must undertake the defence of heresy by arguments.

*Prohibitos.* — Books that come under this clause must be forbidden not merely by a Roman congregation, but immediately by letters issued in the name of the Pope and mentioning them by name. Such a book is Fénélon's "*Explication des Maximes des Saints.*" They must be forbidden under pain of excommunication; some authorities say even under pain of excommunication reserved to the Holy See.

*Retinentes.* — Retaining for any purpose whatever without leave.

*Defendentes.* — Defending the book or its heretical doctrine by word, writing, or deed.

III. Schismaticos et eos qui a Romani Pontificis pro tempore exsistentis obedientia pertinaciter se subtrahunt vel recedunt.

*Schismaticos.* — Schismatics are those who refuse to be subject to the Roman Pontiff, the divinely constituted head of the Church, whether through mere malice or because they hold false opinions about the Church and Catholic doctrine, and thus separate themselves from the body of the Church, constituting themselves a new body or joining some other religious body already in existence.

*Recedunt.* — Even those whose act does not amount to schism, but who knowingly and wilfully withdraw themselves from obedience due to the Roman Pontiff and refuse to acknowledge his authority in some spiritual matter, incur this excommunication. One who continued to acknowledge the Pope's authority but refused to obey his commands on account of the difficulty of obedience,

or for some similar motive, would not incur this censure.

IV. Omnes et singulos, cuiuscumque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore existentium ad universale futurum Concilium appellantes, nec non eos, quorum auxilio, consilio vel favore appellatum fuerit.

V. Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. Cardinales, Patriarchas, Archiepiscopos, Episcopos, Sedisque Apostolicæ Legatos, vel Nuncios, aut eos a suis Diœcesibus, Territoriis, Terris, seu Dominiis eiicientes, nec non ea mandantes, vel rata habentes, seu præstantes in eis auxilium, consilium vel favorem.

VI. Impedientes directe vel indirecte exercitium iurisdictionis ecclesiasticæ sive interni sive externi fori, et ad hoc recurrentes ad forum sæculare, eiusque mandata procurantes, edentes, aut auxilium, consilium vel favorem præstantes.

*Impedientes.* — Hindering those who possess ecclesiastical jurisdiction from exercising it; this censure does not touch those who put obstacles in the way of the exercise of the power of Orders. It is done directly by threatening evil to those who have jurisdiction in case they use it, indirectly, when others connected with them are threatened, or pressure is brought to bear upon them but the object of it is not avowed.

*Recurrentes.* — Not only the foregoing, but also those who have recourse to the civil authority to hinder the exercise of ecclesiastical jurisdiction fall under this censure.

*Præstantes.* — "Giving help, counsel, or favor thereto" is by some limited to the last clause, "Procuring or issuing

its mandates;" by others it is extended to the other two clauses of the censure.

VII. Cogentes sive directe, sive indirecte iudices laicos ad trahendum ad suum tribunal personas ecclesiasticas præter canonicas dispositiones: item edentes leges vel Decreta contra libertatem aut iura Ecclesiæ.

*Cogentes.* — The Holy Office, January 23, 1886, explained that this censure only affected legislators and other authorities who, contrary to the law of the Church, where this is in force, compel lay judges to bring ecclesiastical persons before their tribunal as parties in a civil or criminal suit.

*Edentes.* — Those who are the authors of laws and decrees against the liberty and rights of the Church in the widest sense incur this censure. Makers of laws to expel Religious Orders from the country, or to hinder the clergy in the exercise of their functions of preaching, instructing, or administering the sacraments, fall under the censure.

VIII. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quælibet a Sede Apostolica, vel ab eiusdem Legatis aut Delegatis quibuscumque profecta, eorumque promulgationem vel exsecutionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes, sive alios lædentes vel perterrefacientes.

*Recurrentes.* — Having recourse by petition or appeal or any other way to the civil authority and thus hindering the publication or execution of letters from the Holy See.

*Acta.* — Letters, acts, rescripts of grace or of justice, coming either immediately from the Pope or from his legates or delegates, or from the Roman congregations, are all comprised in this clause.

*Prohibentes.* — Hindering directly or indirectly their

promulgation and execution by having recourse to the civil authority, or, as some maintain, by any other means, for the law does not distinguish nor should we do so.

*Lædentes.* — Injuring or frightening those whose interest it is to have the letters or acts published and executed, because of those letters or acts.

IX. Omnes falsarios litterarum Apostolicarum, etiam in forma Brevis ac supplicationum gratiam vel iustitiam concernentium, per Romanum Pontificem, vel S. R. E. Vice-Cancellarios seu Gerentes vices eorum aut de mandato Eiusdem Romani Pontificis signatarum: nec non falso publicantes Litteras Apostolicas, etiam in forma Brevis, et etiam falso signantes supplicationes huiusmodi sub nomine Romani Pontificis seu Vice-Cancellarii aut Gerentis vices prædictorum.

X. Absolventes complicem in peccato turpi etiam in mortis articulo, si alius Sacerdos licet non adprobatus ad confessiones, sine gravi exoritura infamia et scandalo, possit excipere morientis confessionem.

This censure was explained in the Part on Penance.

XI. Usurpantes aut sequestrantes iurisdictionem, bona, redditus, ad personas ecclesiasticas ratione suarum Ecclesiarum aut Beneficiorum pertinentes.

*Usurpantes.* — Seizing as their lawful owner, not like a thief. Those who get possession of ecclesiastical property from those who seized it in the first instance do not incur this censure, but they fall under that inflicted by the Council of Trent,[1] which is placed below in the next series but one, p. 412.

*Sequestrantes.* — Judges or those who make use of a judge's authority to sequestrate jurisdiction, temporal

[1] Sess. xxii, c. 11, de ref.

or spiritual, property, or rents, belonging to ecclesiastical persons on account of their churches or benefices; not the ecclesiastical property belonging to hospitals, or to churches for the support of the fabric, etc., or to religious houses.

XII. Invadentes, destruentes, detinentes per se vel per alios civitates, terras, loca aut iura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam iurisdictionem in eis; nec non ad singula prædicta auxilium, consilium, favorem præbentes.

*Invadentes.* — Invading by armed force.

*Destruentes.* — Destroying wholly or in part.

*Detinentes.* — Detaining, whether they be the first invaders or their successors. *Per se vel per alios* refers to the three preceding words.

*Pertinentia.* — Belonging to the Roman Church, not to the Pope or to others as individuals.

*Perturbantes.* — By hindering the making or execution of laws, fostering rebellion, etc.

*Jurisdictionem.* — Exercising supreme authority in places belonging to the Church.

*Præbentes.* — Such as proximately co-operate with the foregoing by contributing money, influencing the people by their writings, etc. Civil officials holding office under the usurper do not fall thereby under the censure, as they are necessary for the preservation of public order.

Pius IX, by the constitution *Romanus Pontifex*, August 28, 1873, added another excommunication specially reserved to the Holy See to the foregoing. It affects: "1. Dignitates et Canonicos Cathedralium Ecclesiarum vacantium, ac illos qui deficientibus Capitulis Vicarios deputant (vacantis ecclesiæ), aut vacantes ecclesias legitime admin-

istrant, qui ante exhibitionem Litterarum Apostolicarum concedere et transferre in nominatum et præsentatum ad eandem Ecclesiam ejus curam, regimen, et administrationem sub quovis titulo, nomine, quæsito colore, ausi fuerint. 2. Nominatos et præsentatos ad vacantes ecclesias, qui earum regimen, et administrationem suscipere audent ex concessione et translatione a Dignitatibus et Canonicis, aliisque, de quibus supra, in eos peracta. 3. Necnon in eos qui præmissis paruerint, vel auxilium, consilium, aut favorem præstiterint, cujuscumque status, conditionis, præeminentiæ, et dignitatis, fuerint."

A quibus omnibus excommunicationibus huc usque recensitis absolutionem Romano Pontifici pro tempore speciali modo reservatam esse et reservari; et pro ea generalem concessionem absolvendi a casibus et censuris, sive excommunicationibus Romano Pontifici reservatis nullo pacto sufficere declaramus revocatis insuper earundem respectu quibuscumque indultis concessis sub quavis forma et quibusvis personis etiam Regularibus cuiuscumque Ordinis, Congregationis, Societatis et Instituti, etiam speciali mentione dignis et in quavis dignitate constitutis. Absolvere autem præsumentes sine debita facultate, etiam quovis prætextu, excommunicationis vinculo Romano Pontifici reservatæ innodatos se sciant dummodo non agatur de mortis articulo, in quo tamen firma sit quoad absolutos obligatio standi mandatis Ecclesiæ, si convaluerint.

### Excommunicationes Latæ Sententiæ Romano Pontifici Reservatæ

Excommunicationi latæ sententiæ Romano Pontifici reservatæ subiacere declaramus.

I. Docentes vel defendentes sive publice, sive privatim

propositiones ab Apostolica Sede damnatas sub excommunicationis pœna latæ sententiæ; item docentes vel defendentes tamquam licitam praxim inquirendi a pœnitente nomen complicis, prouti damnata est a Benedicto XIV in Const. *Suprema* 7 Iulii 1745; *Ubi primum* 2 Iulii 1746; *Ad eradicandum* 28 Septembris 1746.

*Docentes.* — One who publicly or privately teaches, or publicly or privately defends, as not being worthy of condemnation, propositions which have been condemned by the Holy See under pain of excommunication falls under this censure. A catalogue of such propositions will be found in Lehmkuhl.[1] Some of these propositions are heretical and one who believed and taught them would incur the first excommunication of this constitution specially reserved to the Holy See, and not this. The censure would not be incurred for teaching or defending a proposition condemned by the Index, Holy Office, or a general council.

*Complicis.* — A confessor is as a rule forbidden to ask a penitent the name of a person with whom he has committed a sin. Any one who teaches or defends the practice of asking in confession the name of an accomplice and refusing absolution if the penitent will not disclose it, falls under this censure. It is here supposed that the action may sometimes be lawful according to what is generally laid down under the head of fraternal correction, and one who teaches that in those exceptional cases the confessor may ask the name of the accomplice does not of course incur this censure.

II. Violentas manus, suadente diabolo, iniicientes in Clericos, vel utriusque sexus Monachos, exceptis quoad

[1] vol. ii, n. 942.

reservationem casibus et personis, de quibus iure vel privilegio permittitur, ut Episcopus aut alius absolvat.

*Violentas.* — This signifies any serious injury by deed, not by word, against the cleric's person, liberty, or dignity.

*Suadente diabolo.* — An injury which is mortally sinful. The censure is not incurred when a cleric is struck without sin, as in self-defence, or for the sake of correction by parents or masters.

*Clericos.* — Any one who has received at least the tonsure.

*Monachos.* — Religious of both sexes, novices, lay brothers, and tertiaries, if they wear the habit and live in community.

*Exceptis.* — This clause only affects the reservation of the censure. Bishops could absolve a delinquent from this censure if the injury were of a less serious character, and even when it was serious if it was occult. Abbots could absolve their subjects who had incurred the censure unless the injury were very grave. These provisions of the law are now of less moment, especially in missionary countries, where confessors usually receive faculties to absolve from this censure, however it may have been incurred.

This censure guarantees the privilege of personal inviolability of the clergy and is called the *Privilegium canonis.*

III. Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quoslibet complices, vel qualemcumque operam aut favorem præbentes, nec non de industria spectantes, illudque permittentes, vel quantum in illis est, non prohibentes, cuiuscumque dignitatis sint, etiam regalis vel imperialis.

*Duellum.* — Duel is here to be taken in the strict and

technical sense of an unlawful fight with deadly weapons between two combatants by special arrangement as to time and place.

*Acceptantes.* — Not only those who actually fight the duel but those who send or accept a challenge to a duel which does not come off, fall under the censure.

*Complices.* — Accomplices are those who order or counsel a duel, or who act as intermediaries or seconds. All such and those who in any way assist in a duel are excommunicated. It is a moot point whether accomplices in a challenge or acceptance of a duel which is not fought come under the censure.

*Spectantes.* — Onlookers who have come for the purpose of seeing the duel, not mere passers-by who happen to see it, nor those who look on in secret from a distance.

*Non prohibentes.* — Military or civil authorities who permit or who do not prohibit duelling when they have the power to do so.

IV. Nomen dantes sectæ *Massonicæ*, aut *Carbonariæ*, aut aliis eiusdem generis sectis quæ contra Ecclesiam vel legitimas potestates seu palam, seu clandestine machinantur; nec non iisdem sectis favorem qualemcumque præstantes; earumve occultos coryphæos ac duces non denunciantes, donec non dedunciaverint.

*Sectæ.* — All who become Freemasons, or Carbonari, or members of any similar society which plots either openly or in secret against the legitimate government in Church or State, whether an oath of secrecy is exacted from the members or not, fall under this censure.

*Præstantes.* — All who favor them in any way, openly or in secret, directly or indirectly, physically or morally,

positively or negatively, by not repressing them when they ought and can do it.

*Denunciaverint.* — All who know the secret heads and leaders of such societies are bound to denounce them to the ordinary under pain of excommunication, and those who neglect this duty remain excommunicated until they make the denunciation, when the censure ceases.

There is no obligation to make the denunciation when the heads or leaders are publicly known, or when it would be useless, or when it would entail serious personal damage unless the public damage would be still greater from not making the denunciation.

Note. — For the benefit of American readers it may be well to make special reference to three societies condemned by the Church: the Knights of Pythias, the Odd Fellows, and the Sons of Temperance. These three societies were condemned August 20, 1894. Soon after this condemnation some bishops of the United States represented to the Holy See the grave pecuniary loss which many Catholic members of those societies would sustain from being obliged to sever all connection with them. Under the statutes of those societies the members were entitled in the event of sickness or grave necessity to receive aid, and in the case of death the family of the deceased member would receive a certain quota of assistance. Now many of the Catholic members had for a long time been paying assessments at stated times as a condition for membership and for the right to the foregoing advantages without, however, receiving anything in return for those payments. Could the Holy See permit the application of some remedy by which this serious loss would be prevented? If the Catholic mem-

bers would discontinue payment of their assessments, they, and not the society to which they belonged, would suffer the loss. Besides, it sometimes happens that members are legally bound by periodic instalments to discharge debt contracted by the society. The Holy See was therefore asked whether it would be lawful for Catholic members of any of those three societies to continue the payment of the required assessments or debt and to retain their names on the register of members. To this question the Cong. of the Holy Office answered (January 18, 1896) in the following terms: "*Generatim loquendo non licere: et ad mentem. Mens est quod ea res tolerari possit sequentibus conditionibus et adjunctis, simul in casu concurrentibus, scilicet:* 1. *Si bona fide primitus sectæ nomen dederit antequam sibi innotuisset societatem fuisse damnatam.* 2. *Si absit scandalum vel opportuna removeatur declaratione, id a se fieri ne jus ad emolumenta vel beneficium temporis in ære alieno solvendo amittat: a quavis interim sectæ communione et a quocunque interventu, etiam materiali, ut præmittitur, abstinendo.* 3. *Si grave damnum sibi aut familiæ ex renunciatione obveniat.* 4. *Tandem ut non adsit vel homini illi vel familiæ ejus periculum ullum perversionis ex parte sectariorum, spectato præcipue casu vel infirmitatis vel mortis: neve similiter adsit periculum funeris peragendi a ritibus Catholicis alieni.*" From this response it appears that, when certain conditions are found together in a given case, it may be tolerated for a member to continue the prescribed payments and retain his name on the register. The conditions are first, that the person was in good faith when he became a member, not aware of the society being under condemnation; second, that there be no scandal, or, if there be, that it should be removed by an opportune statement that the

object to be attained is not to lose the right to the emoluments nor to the time benefit in payment of debt, while the member must abstain from any communication with or participation in the society; third, that a grave loss would arise to the member or to his family from his renunciation of the society; fourth, that there be no danger of perversion to the member or his family from the sectaries, especially in the case of sickness or death, nor any danger of having a funeral at variance with the Catholic ritual. The Sovereign Pontiff Leo XIII approved and confirmed the Decree of the Holy Office, but besides ordered that, as the question was full of dangers and difficulties, and one which affected various ecclesiastical provinces, the Delegate-Apostolic of the United States for the time being should for the sake of uniformity make provision for particular cases, after the conditions given above would have been complied with. Hence if a Catholic member of one of those three societies should wish to procure the pecuniary advantages of members and for this purpose retain a certain sort of membership so far as to have his name kept on the register, a petition is to be sent to the Delegate-Apostolic at Washington, D.C., by the bishop, pastor, or confessor, setting forth the name of the member, when he joined the society, whether in good faith, etc., and asking that his name be retained in the register of the forbidden society. His Excellency is accustomed to send a reply granting the petition, provided that the statement made be correct and the conditions required by the Holy See be verified. Such passive membership is no obstacle to admission to the sacraments.

It is to be observed that it is only for the three societies named above that this concession has been made by the

Holy See, and that it is still prohibited *sub gravi* to join any of them. It is even held by some writers that those three societies are forbidden under pain of excommunication. Thus Putzer in his work on the "Apostolic Faculties" (n. 142) says of them, "*Censuris subjectæ esse videntur.*" Sabetti (n. 994, q. 6), on the other hand, holds, "*Non sunt damnatæ sub censura, sed solum quia sunt malæ.*" If it appear that these societies plot against the Church either openly or secretly, their members incur excommunication reserved to the Roman Pontiff, because the terms of the censure (n. 4, 2d tabella) are verified, "*Quæ contra Ecclesiam vel legitimam potestatem seu palam seu clandestine machinantur.*" It is on this point that the controversy turns, whether or not these societies can be said to conspire against the Church. Since no certain solution has been given to the question, it is to be held according to a general principle of censures that it is not incurred. The Holy See was asked regarding another secret society (the Independent Order of Good Templars), whether the excommunication against secret societies inflicted in the constitution *Apostolicæ Sedis* affected this society. The question was not definitely settled by the Holy Office, the answer being "*Dilata,*" but this Congregation declared that it was forbidden under pain of mortal sin to join that society. The Holy See has given no authoritative decision as to whether the three societies under consideration fall under censure; but since the Holy Office postponed a definite answer as to the excommunication inflicted on the Independent Order of Good Templars, there may be reason for holding that the excommunication does not affect the three societies, inasmuch as a concession of passive membership under certain conditions is made in favor of them

and not allowed for the Independent Order of Good Templars.

There are other societies in the United States about which doubt has arisen whether they are to be considered forbidden. According to a Decree of the Third Plenary Council of Baltimore (n. 255) a difficulty of this kind is to be settled by a commission of the archbishops, and, if the members should not agree, the question is to be referred to Rome. The same Plenary Council sets down (n. 247) two means or signs by which it may often be ascertained whether a particular society should be considered as forbidden. One sign is, when the society enjoins a secret to be kept so absolutely as not to permit any manifestation of it to ecclesiastical authority. The other sign is, when the society exacts an oath or promise of blind obedience. In either of these cases the society is to be held as forbidden, so that Catholics who become members of it are to be deprived of sacramental absolution until they renounce it actually or seriously promise to do so immediately. — End of Note.

V. Immunitatem asyli ecclesiastici violare jubentes, aut ausu temerario violantes.

*Immunitatem.* — Immunity is a right belonging to sacred places, such as churches, chapels, cemeteries, religious houses, seminaries, bishops' palaces, and hospitals wherein there is a public chapel, so that those who take refuge there may not be taken away by force. Highway robbers, murderers, heretics, rebels, and others are excluded from the enjoyment of the privilege by law, and in many countries the privilege is still further restricted by concordats, while in others it is not recognized by the civil

authority at all, and even Catholics are obliged to act as if it did not exist.

*Jubentes.* — Those who knowingly and freely without compulsion violate ecclesiastical immunity or who command others to do so incur the censure. The two following censures were commented on in the first volume in connection with the religious vow of chastity.

VI. Violantes clausuram Monialium, cuiuscumque generis aut conditionis, sexus vel ætatis fuerint, in earum monasteria absque legitima licentia ingrediendo; pariterque eos introducentes vel admittentes, itemque Moniales ab illa exeuntes extra casus ac formam a S. Pio V in Constit. *Decori* præscriptam.

VII. Mulieres violantes Regularium virorum clausuram, et Superiores aliosve eas admittentes.

VIII. Reos simoniæ realis in Beneficiis quibuscumque, eorumque complices.

*Realis.* — In which the simoniacal contract is at least partially performed on both sides.

*Beneficiis.* — In buying or selling benefices, or in the collation, election, or presentation to benefices.

IX. Reos simoniæ confidentialis in Beneficiis quibuslibet, cuiuscumque sint dignitatis.

*Dignitatis.* — All prelates therefore, even cardinals, incur this censure if they are guilty of confidential simony.

X. Reos simoniæ realis ob ingressum in Religionem.

*Ingressum.* — Those who buy or sell admission to profession in a Religious Order incur this censure, not those who pay for their support during the novitiate, or even afterward.

XI. Omnes qui quæstum facientes ex indulgentiis aliisque gratiis spiritualibus excommunicationis censura plec-

tuntur Constitutione S. Pii V. *Quam plenum* 2 Ianuarii 1569.

*Indulgentiis.* — Offering indulgences or other spiritual favors, such as the faculty of choosing one's confessor, dispensations from abstinence, etc., in consideration for a sum of money.

XII. Colligentes eleemosynas maioris pretii pro Missis, et ex iis lucrum captantes, faciendo eas celebrari in locis ubi Missarum stipendia minoris pretii esse solent.

*Colligentes.* — The decree of the Sacred Congregation of the Council, *Ut debita*, May 11, 1904, *On what is to be observed and avoided in the satisfaction of manual Masses*, specially provides that this censure shall retain its full force.

XIII. Omnes qui excommunicatione mulctantur in Constitutionibus S. Pii V, *Admonet nos*, quarto Kalendas Aprilis 1567, Innocentii IX, *Quæ ab hac Sede* pridie nonas Novembris 1591, Clementis VIII, *Ad Romani Pontificis curam*, 26 Iunii 1592, et Alexandri VII, *Inter ceteras*, nono Kalendas Novembris 1660, alienationem et infeudationem Civitatum et Locorum S.R.E., respicientibus.

By the constitution of St. Pius V those are excommunicated who treat of or advise the granting in fief or alienating of cities and places belonging immediately to the Holy See. These terms are to be strictly interpreted and more probably would not affect those who should advise the Pope to surrender the temporal dominions of the Holy See to the Italian government.

XIV. Religiosos præsumentes clericis aut laicis extra casum necessitatis Sacramentum Extremæ Unctionis aut Eucharistiæ per viaticum ministrare absque Parochi licentia.

*Religiosos.* — Religious who are solemnly professed in an Order approved by the Pope, not others,

*Præsumentes extra casum necessitatis.* — Those, therefore, who administer the sacraments in case of necessity or what they think to be such do not incur the censure.

*Laicis.* — Except those who are *de familia.*

*Viaticum.* — To administer holy communion to the sick after they have received the Viaticum is not forbidden under pain of incurring this censure.

*Parochi.* — Some authorities maintain that where there are no parish priests but only missioners with the cure of souls, as in Great Britain and in the United States, there is no room for this censure, as it only punishes the violation of the rights of parish priests strictly so called.

XV. Extrahentes absque legitima venia reliquias ex Sacris Cœmeteriis sive Catacumbis Urbis Romæ eiusque territorii, eisque auxilium vel favorem præbentes.

*Reliquias.* — The bones or ashes of martyrs buried in the Catacombs, not other remains or souvenirs.

XVI. Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicet impendendo auxilium vel favorem.

To incur this excommunication the person communicated with must be excommunicated by the Pope by name or denounced by him as already under excommunication; he who communicates with him must do so in the crime for which he incurred excommunication by giving him help or favor to enable him to persevere in his wickedness.

XVII. Clerici scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis et ipsos in officiis recipientes.

*Clericos.* — Probably only the inferior secular clergy are comprised under this term when it is to be interpreted strictly as here.

*Recipientes.* — Admitting them to the performance of sacred offices, such as the celebration of Mass, the administration of the sacraments, public prayers, which clerics perform as ministers of the Church.

## Excommunicationes Latæ Sententiæ Episcopis sive Ordinariis Reservatæ

Excommunicationi latæ sententiæ Episcopis sive Ordinariis reservatæ subiacere declaramus:

I. Clericos in Sacris constitutos vel Regulares aut Moniales post votum solemne castitatis matrimonium contrahere præsumentes; nec non omnes cum aliqua ex prædictis personis matrimonium contrahere præsumentes.

*Votum solemne.* — All who after taking a solemn vow of chastity presume to marry, and those who contract marriage with them, incur this censure.

II. Procurantes abortum, effectu sequuto.

*Abortum.* — Abortion is to be understood in the strict sense, not embryotomy or craniotomy or causing premature birth when the child is viable. To incur the censure the abortion must be directly intended, so that one who struck a pregnant woman and thus caused abortion, but without any intention of causing it, would not incur the censure. Some theologians are of opinion that the mother who procures abortion in herself is excused from this censure, inasmuch as she was excepted in the older legislation, and so may be supposed to be excepted in this constitution whose object is to limit the number of censures.[1]

Note. — In some dioceses of the United States it is a reserved excommunication for the mother to cause abortion on herself. Hence whatever opinion one may hold on the

[1] According to the new Code the mother incurs this excom-

question, whether this case is reserved by the constitution *Apostolicæ Sedis* or by the bishop, a confessor before absolving such a mother should procure faculties from the bishop, unless he would have or procure them from the Holy See. — END OF NOTE.

III. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes.

To the foregoing is to be added the following from the decree *Ut debita*, May 11, 1904, "*Qui statuta in præcedentibus articulis 8, 9, 10, et 11 quomodolibet aut quovis prætextu perfringere ausus fuerit . . . si laicus, excommunicationem latæ sententiæ episcopis reservata obstringetur.*" The acts hereby forbidden under pain of excommunication reserved to the bishop in the case of lay people are:

1. The giving of stipends for Masses to booksellers, merchants, managers of magazines and papers, and dealers in church furniture, or to any one else, for any other purpose except with the intention that the Masses should be said by them or their subjects if they be priests.

2. It is forbidden to separate the stipend from the saying of the Mass for which it is offered, or to exchange it for anything else, or to subtract anything from it, but it must be handed over wholly as it is to him who says the Mass.

3. It is forbidden to sell or buy books, church furniture, or anything else, or to pay for subscriptions to magazines and papers by means of stipends for Mass, whether the Masses are to be said or have already been said, whenever it is done habitually and furthers trade.

4. Without special leave of the Holy See, it is forbidden

munication, and clerics guilty of the crime are to be deposed. C.J.C., can. 2350, sec. 1.

to subtract anything from the stipends offered at celebrated shrines for the upkeep of such places.

The Third Plenary Council of Baltimore (n. 124) punished with excommunication reserved to the ordinary those under its jurisdiction who should dare to attempt to marry again after obtaining a civil divorce; as also (n. 127) those Catholics who should marry before a minister of any non-Catholic sect in any place subject to the prelates who were members of the Council.

## Excommunicationes Latæ Sententiæ Nemini Reservatæ

Excommunicationi latæ sententiæ nemini reservatæ subiacere declaramus:

I. Mandantes seu cogentes tradi Ecclesiasticæ sepulturæ hæreticos notorios aut nominatim excommunicatos vel interdictos.

Those who order by public authority or compel by violence Catholics to bury in consecrated ground notorious heretics, or those who have been excommunicated by name, or publicly denounced as interdicted, incur this censure.

II. Lædentes aut perterrefacientes Inquisitores, denuntiantes, testes, aliosve ministros S. Officii; eiusve Sacri Tribunalis scripturas diripientes, aut comburentes; vel prædictis quibuslibet auxilium, consilium, favorem præstantes.

III. Alienantes et recipere præsumentes bona ecclesiastica absque Beneplacito Apostolico, ad formam Extravagantis, *Ambitiosæ* De Reb. Ecc. non alienandis.

*Alienantes.*—This term has here a wide signification

[1] Catholics who contract marriage before a non-Catholic minister incur excommunication *ipso facto* reserved to the ordinary. C.J.C., can. 2319, sec. 1, 1°. Those who marry with an explicit or implicit agreement that all or any of the children shall be brought up non-Catholics are excommunicated *ipso facto* with reservation to the ordinary. C.J.C., can. 2319, sec. 1, 2°. Catholics who knowingly

and means any act by which ownership is transferred, such as sale, mortgage, lease for a longer term than three years. It refers to administrators of ecclesiastical property.

*Bona ecclesiastica.* — Movable or immovable property which belongs to the Church and is considerable in amount. For the ordinary may alienate even real Church property up to the value of £15 or £20. Produce of ecclesiastical property may also be sold and what can not be kept without loss.

*Absque beneplacito.* — The leave of the Holy See and a good reason are required for the lawful alienation of Church property.

IV. Negligentes sive culpabiliter omittentes denunciare infra mensem Confessarios sive Sacerdotes a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Prædecess. Nostris Gregorio XV, Constit. *Universi* 20 Augusti 1622, et Benedicto XIV, Constit. *Sacramentum pœnitentiæ*, 1 Iunii 1741.

Præter hos hactenus recensitos, eos quoque quos Sacrosanctum Concilium Tridentinum, sive reservata Summo Pontifici aut Ordinariis absolutione, sive absque ulla reservatione excommunicavit, Nos pariter ita excommunicatos esse declaramus; excepta anathematis pœna in Decreto Sess. IV, *De editione et usu Sacrorum Librorum* constituta, cui illos tantum subiacere volumus, qui libros de rebus sacris tractantes sine Ordinarii approbatione imprimunt, aut imprimi faciunt.

*Heic paulisper sistimus, ut inseramus excommunicationis pœnas, quas inflixit Tridentinum Concilium cum adiectis ab eo reservationibus, atque inde prosequemur exponere Constitutionem de qua agimus.*

presume to offer their children for baptism to non-Catholic ministers incur excommunication reserved to the ordinary. C.J.C., can. 2319, sec. 1, 3°. Parents or those who are in the place of parents who knowingly give their children to be brought up in a non-Catholic religion incur excommunication reserved to the ordinary. C.J.C., can. 2319, sec. 1, 4°.

De usurpatoribus quorumcumque bonorum ecclesiasticorum aut iurium, quorum excommunicatio est Romano Pontifici a Concilio Tridentino reservata.

Sess. XXII, c. 11, de Reform: "*Si quem clericorum vel laicorum quacumque is dignitate, etiam imperiali aut regali, præfulgeat, in tantum malorum omnium radix cupiditas occupaverit, ut alicuius ecclesiæ seu cuiusvis sæcularis vel regularis Beneficii, montium pietatis, aliorumque piorum locorum iurisdictiones, bona, census ac iura etiam feudalia emphyteutica, fructus, emolumenta, seu quascumque obventiones, quæ in ministrorum et pauperum necessitates converti debent, per se vel alios vi vel timore incusso, seu etiam per suppositas personas Clericorum aut Laicorum, seu quacumque arte aut quocumque quæsito colore in proprios usus convertere, illosque usurpare præsumpserit, seu impedire, ne ab iis ad quos iure pertinent, percipiantur, is anathemati tamdiu subiaceat, quamdiu iurisdictiones, bona, res, iura, fructus et redditus, quos occupaverit, vel qui ad eum quomodocumque, etiam ex donatione suppositæ personæ, pervenerint, ecclesiæ eiusque administratori sive Beneficiato integre restituerit, ac deinde a Romano Pontifice absolutionem obtinuerit . . . Clericus vero, qui nefandæ fraudis et usurpationis huiusmodi fabricator seu consentiens fuerit eisdem pœnis subiaceat. . . .*"

Excommunicatur Magistratus si ad instantiam Episcopi non præbeat auxilium adversus contradictores clausuræ monialium: itemque violantes earum clausuram.

Sess. XV, c. 5, de Reg.: "*Bonifacii* VIII *Constitutionem, quæ incipit,* Periculoso, *renovans Sancta Synodus, universis Episcopis sub obtestatione divini iudicii et interminatione*

*maledictionis æternæ præcipit, ut in omnibus monasteriis sibi subiectis ordinaria, in aliis vero Sedis Apostolicæ auctoritate, clausuram sanctimonialium, ubi violata fuerit, diligenter restitui, et ubi inviolata est, conservari maxime procurent, inobedientes atque contradictores per censuras ecclesiasticas aliasque pœnas, quacumque appellatione postposita, compescentes, invocato etiam ad hoc, si opus fuerit, auxilio brachii sæcularis. Quod auxilium ut præbeatur omnes Christianos Principes hortatur Sancta Synodus, et sub excommunicationis pœna ipso facto incurrenda, omnibus magistratibus sæcularibus iniungit.*"

Sess. XXV, ex cap. 5, de Reg., "*Ingredi autem intra septa monasterii nemini liceat, cuiuscumque generis aut conditionis, sexus vel ætatis fuerit, sine Episcopi vel Superioris licentia in scriptis obtenta, sub excommunicationis pœna ipso facto incurrenda.*"

Excommunicantur Raptores mulierum eorundemque consocii.

Sess. XXIV, ex cap. 6, de Reform Matr.: "*Decernit Sancta Synodus, inter raptorem et raptam, quamdiu ipsa in potestate raptoris manserit, nullum posse consistere matrimonium. Quod si rapta a raptore separata et in loco tuto et libero constituta illum in virum habere censuerit, eam raptor in uxorem habeat, et nihilominus raptor ipse ac omnes illi consilium, auxilium et favorem præbentes, sint ipso iure excommunicati. . . .*"

Excommunicantur qui libertatem matrimonii contrahendi violant.

Sess. XXIV, ex cap. 9, de Reform Matr.: "*Ita plerumque temporalium dominorum ac magistratuum mentis oculos*

*terreni affectus atque cupiditates, excœcant, ut viros et mulieres, sub eorum iurisdictione degentes, maxime divites vel spem magnæ hereditatis habentes, minis et pœnis adigant cum iis matrimonium invitos contrahere, quos ipsi domini vel magistratus illis præscripserint. Quare, quum maxime nefarium sit Matrimonii libertatem violare et ab eis iniurias nasci, a quibus iura expectantur, præcipit Sancta Synodus omnibus, cuiuscumque gradus, dignitatis et conditionis existant, sub anathematis pœna, quam ipso facto incurrant, ne quovis modo directe vel indirecte subditos suos vel quoscumque alios cogant, quominus libere matrimonia contrahant.*"

Excommunicantur, qui cogunt mulierem ad ingrediendum monasterium, vel impediunt.

Sess. XXI, cap. 18, de Reg.: "*Anathemati Sancta Synodus subiicit omnes et singulas personas, cuiuscumque qualitatis vel conditionis fuerint, tàm Clericos quam Laicos, sæculares vel regulares, atque etiam qualibet dignitate fungentes, si quomodolibet coegerint aliquam virginem vel viduam, aut aliam quamcumque mulierem, præterquam in casibus in iure expressis, ad ingrediendum monasterium vel ad suscipiendum habitum cuiuscumque religionis, vel ad emittendam professionem, quique consilium, auxilium vel favorem dederint, quique scientes eam non sponte ingredi monasterium aut habitum suscipere, aut professionem emittere, quoquo modo eidem actui vel præsentiam vel consensum vel auctoritatem interposuerint. Simili quoque anathemati subiicit eos, qui sanctarum virginum vel aliarum mulierum voluntatem veli accipiendi vel voti emittendi quoquo modo sine iusta causa impedierint.*"

Excommunicantur duellantes et reliqui, qui duellum quasi honestum spectaculum permittunt vel adiuvant, vel assistunt.

Sess. XXV, ex cap. 19, de Reform: "*Imperator, Reges, Duces, Principes, Marchiones, Comites et quocumque alio nomine Domini temporales, qui locum ad monomachiam in terris suis inter christianos concesserint, eo ipso sint excommunicati. Qui vero pugnam commiserint, et qui eorum patrini vocantur, excommunicationis . . . pœnam incurrant. . . . Illi etiam, qui consilium in causa duelli tam in iure, quam in facto dederint aut alia quacumque ratione ad id quemquam suaserint, nec non spectatores, excommunicationis ac perpetuæ maledictionis vinculo teneantur.*"

Excommunicantur qui sequentes falsas propositiones docent.

Sess. XIII, ex cap. 11, de Euchar.: "*Ne tantum Sacramentum* (Eucharistiæ) *indigne atque ideo in mortem et condemnationem sumatur, statuit atque declarat ipsa Sancta Synodus, illis, quos conscientia peccati mortalis gravat, quantumcumque etiam se contritos existiment, habita copia confessoris, necessario præmittendam esse Confessionem sacramentalem. Si quis autem contrarium docere, prædicare vel pertinaciter asserere, seu etiam publice disputando defendere præsumpserit, eo ipso excommunicatus existat.*"

Sess. XXIV, ex cap. 1, de Reform Matr.: "*Dubitandum non est, clandestina matrimonia, libero contrahentium consensu facta, rata et vera esse matrimonia, quamdiu Ecclesia ea irrita non fecit, et proinde iure damnandi sunt illi, ut eos Sancta Synodus anathemate damnat, qui ea vera ac rata esse negant, quique falso affirmant, matrimonia a filiis-*

*familias sine consensu parentum contracta irrita esse, et parentes ea rata vel irrita facere posse.*"

*Hæ sunt excommunicationes quas in rebus disciplinæ inflixisse Tridentinum Concilium reperimus.*

Clement IX, by the constitution *Solicitudo*, July 17, 1669, forbade missionaries sent to the East Indies, or to North or South America, to trade by themselves or through others, under pain of excommunication, loss of active and passive voice, and the confiscation of the merchandise and gains. He ordered all gains made in such trading to be paid over to the ordinary and by him to be distributed among the poor. He declared all Superiors of Religious Orders or congregations to be subject to the same penalties if they neglect to punish their subjects who may be guilty of such unlawful trading. No delinquent can be absolved except when in danger of death unless restitution of the ill-gotten gains has been already made.

Note. — The censure here explained by the author is not contained in the constitution *Apostolicæ Sedis*, but was subsequently added (December 4, 1872) by the Holy See, and was declared to apply to the East Indies and to America. (See Coll. de Prop. Fide, n. 351.) It was extended to the Chinese missionaries by a Decree of the Holy Office (January 17, 1883). In this same decree it was declared that the excommunication affects not only missionaries from Europe, but any ecclesiastics who under the name of missionary or under any other title will be sent for a time to, or will tarry in one of the countries named in any manner whatsoever (*quomodolibet morabuntur*). A question of practical importance for the United States arises, *viz.*, whether the censure affects the clergy of this country,

secular and regular? There has been no exception made in regard to the United States, so that when we find the words, "*Missionariis quibuslibet in Indiis Orientalibus et America existentibus,*" mentioned in an encyclical of the S. C. of Propaganda (March 29, 1873) regarding the censure, we should infer the inclusion of the United States. It would, therefore, seem that the censure may be incurred in this country since it was applied by the Holy See to America generally. However, it is comparatively few of the clergy of the United States who could incur this censure. Those who are affiliated to a particular diocese, whether they came from Europe or any other country, do not seem to be affected; nor do those who, although not affiliated, have obtained some permanent position. Neither of these classes can be said *morari* in the sense of the decree. Those ecclesiastics may be guilty of grave sin by *negotiatio* or trading forbidden by the general law of the Church; but they would not incur the censure. Whether the same may be held of all other ecclesiastics who may be residing in this country, it is difficult to say with certainty. If they, having no permanent abode here, perform even once an act of trading in this country, it is not clear how they escape this censure. It may, however, be well to quote the opinion of Putzer (Apost. Fac. n. 140), who thinks that this censure has probably ceased in the United States, "*Quæ tamen in locis ubi Diœceses cum clero indigeno et stabiliter incardinato erectæ sunt, ut apud nos, probabiliter cessavit.*" If the censure has been incurred, the delinquent can not be absolved except *in articulo mortis* until he has made restitution of the acquired gains to the ordinary or vicar-apostolic. This is in accordance with the Decree of the Holy Office of 1883.

(See Coll. P. F. n. 352.) However, if the delinquent could not make restitution while he wished to make it, he could be absolved outside of danger of death by an ordinary confessor, as also when he has already made restitution. (Cf. Genicot, vol. 2, n. 612.) — End of Note.

*Sequitur modo SSmi Domini Nostri Constitutio, quam referre assumpsimus.*

## Suspensiones Latæ Sententiæ Summo Pontifici Reservatæ

I. Suspensionem ipso facto incurrunt a suorum Beneficiorum perceptione ad beneplacitum S. Sedis Capitula et Conventus Ecclesiarum et Monasteriorum aliique omnes, qui ad illarum seu illorum regimen et administrationem recipiunt Episcopos aliosve Prælatos de prædictis Ecclesiis, seu Monasteriis apud eandem S. Sedem quovis modo provisos, antequam ipsi exhibuerint Litteras Apostolicas de sua promotione.

II. Suspensionem per triennium a collatione Ordinum ipso iure incurrunt aliquem ordinantes absque titulo Beneficii vel patrimonii cum pacto ut ordinatus non petat ab ipsis alimenta.

III. Suspensionem per annum ab Ordinum administratione ipso iure incurrunt ordinantes alienum subditum etiam sub prætextu Beneficii statim conferendi, aut iam collati, sed minime sufficientis, absque eius Episcopis litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contrahere ibi potuerit, absque Ordinarii eius loci litteris testimonialibus.

IV. Suspensionem per annum a collatione Ordinum ipso

iure incurrit, qui, excepto casu legitimi privilegii, Ordinem sacrum contulerit absque titulo Beneficii vel patrimonii Clerico in aliqua Congregatione viventi, in qua solemnis professio non emittitur, vel etiam religioso nondum professo.

V. Suspensionem perpetuam ab exercitio Ordinum ipso iure incurrunt Religiosi electi, extra Religionem degentes.

By the decree S.C. EE. et RR., November 4, 1892: "Alumni votorum solemnium vel simplicium, perpetuorum vel temporalium, in sacris ordinibus constituti, qui expulsi vel dimissi fuerint perpetuo suspensi maneant, donec a S. Sede alio modo eis consulatur; ac præterea episcopum benevolum receptorem invenerint, et de ecclesiastico patrimonio sibi providerint. Qui in sacris ordinibus constituti et votis simplicibus obstricti, sive perpetuis sive temporalibus, sponte dimissionem ab Apostolica Sede petierint et obtinuerint, vel aliter ex apostolico privilegio a votis simplicibus vel perpetuis vel temporaneis dispensati fuerint, ex claustro non exeant donec episcopum benevolum receptorem invenerint, et de ecclesiastico patrimonio sibi providerint, secus suspensi maneant ab exercitio susceptorum ordinum. Quod porrigitur quoque ad alumnos votorum simplicium temporalium qui quovis professionis vinculo jam forent soluti, ob elapsum tempus quo vota ab ipsis fuerunt nuncupata."

VI. Suspensionem ab Ordine suscepto ipso iure incurrunt, qui eundem Ordinem recipere præsumpserunt ab excommunicato vel suspenso, vel interdicto nominatim denunciatis, aut ab hæretico vel schismatico notorio: eum vero, qui bona fide a quopiam eorum est ordinatus, exercitium non habere Ordinis sic suscepti, donec dispensetur, declaramus.

VII. Clerici sæculares exteri ultra quatuor menses in Urbe commorantes ordinati ab alio quam ab ipso suo Ordinario absque licentia Card. Urbis Vicarii vel absque prævio examine coram eodem peracto, vel etiam a proprio Ordinario posteaquam in prædicto examine reiecti fuerint; nec non Clerici pertinentes ad aliquem e sex Episcopatibus suburbicariis, si ordinentur extra suam diœcesim, dimissorialibus sui Ordinarii ad alium directis quam ad Card. Urbis Vicarium; vel non præmissis ante Ordinem sacrum suscipiendum exercitiis spiritualibus per decem dies in domo urbana Sacerdotum a Missione nuncupatorum, suspensionem ab Ordinibus sic susceptis ad beneplacitum S. Sedis ipso iure incurrunt: Episcopi vero ordinantes ab usu Pontificalium per annum.

Priests who violate the provisions of the decree S. C. C., May 11, 1904, with reference to stipends for Mass which were given above, incur suspension *a divinis* reserved to the Holy See; clerics who are not priests incur suspension from the Orders which they have received, and are made incapable of ascending to higher Orders.

In the province of Westminster, ecclesiastics who have received sacred Orders are strictly prohibited from being present at stage representations in public theaters, or in places temporarily made use of as public theaters, under the penalty to transgressors of suspension to be incurred *ipso facto*, such as has hitherto been the rule in all parts of England, with reservation to the respective ordinaries.

The same penalty enforces a still stricter law in Ireland; in Scotland and in the United States priests are forbidden to go to public theaters, but not under pain of censur-

### Interdicta Latæ Sententiæ Reservata

I. Interdictum Romano Pontifici speciali modo reservatum ipso iure incurrunt Universitates, Collegia et Capitula, quocumque nomine nuncupentur, ab ordinationibus seu mandatis eiusdem Romani Pontificis pro tempore existentis ad universale futurum Concilium appellantia.

II. Scienter celebrantes vel celebrari facientes divina in locis ab Ordinario, vel delegato Iudice, vel a iure interdictis; aut nominatim excommunicatos ad divina officia, seu ecclesiastica sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu Ecclesiæ ipso iure incurrent, donec ad arbitrium eius, cuius sententiam contempserunt, competenter satisfecerint.

Denique quoscumque alios Sacrosanctum Concilium Tridentinum suspensos aut interdictos ipso iure esse decrevit, Nos pari modo suspensioni vel interdicto eosdem obnoxios esse volumus et declaramus.

*Heic iterum paulisper sistimus inserentes Suspensiones vel Interdicta a Concilio Tridentino lata, ut has canonicas censuras Lectores sub oculis habeant.*

### Suspenduntur vel interdicuntur qui variis modis violant canones de sacra Ordinatione.

Sess. XXIII, ex cap. 8, de Reform: "*Unusquisque autem a proprio Episcopo ordinetur. Quod si quis ab alio promoveri petat, nullatenus id ei, etiam cuiusvis generalis aut specialis rescripti vel privilegii prætextu, etiam statutis temporibus permittatur, nisi eius probitas ac mores, Ordinarii sui testimonio, commendentur. Si secus fiat, ordinans a collatione Ordinum per annum et ordinatus a*

*susceptorum Ordinum exsecutione, quamdiu proprio Ordinario videbitur expedire, sit suspensus.*"

Sess. XXIII, ex cap. 14, de Reform: "*Cum promotis per saltum, si non ministraverint, Episcopus ex legitima causa possit dispensare.*"

Sess. VII, c. 10, de Reform: "*Non liceat Capitulis sede vacante, infra annum a die vacationis, ordinandi licentiam, aut litteras dimissorias seu reverendas, ut aliqui vocant, tam ex iuris communis dispositione, quam etiam cuiusvis privilegii aut consuetudinis vigore, alicui, qui Beneficii ecclesiastici recepti sive recipiendi occasione arctatus non fuerit, concedere. Si secus fiat, Capitulum contraveniens ecclesiastico subiaceat interdicto, et sic ordinati, si in minoribus ordinibus constituti fuerint, nullo privilegio clericali, præsertim in criminalibus gaudeant. In maioribus vero ab exsecutione Ordinum ad beneplacitum futuri Prælati sint ipso jure suspensi.*"

Sess. VI, cap 5, de Reform: "*Nulli Episcopo liceat cuiusvis privilegii prætextu pontificalia in alterius diœcesi exercere, nisi de Ordinarii loci expressa licentia, et in personas eidem Ordinario subjectas tantum. Si secus factum fuerit, Episcopus ab exercitio pontificalium, et sic ordinati ab exsecutione Ordinum sint ipso jure suspensi.*"

Sess. XXIII, c. 10, de Reform: "*Abbatibus ac aliis quibuscumque, quantumvis exemptis, non liceat in posterum intra fines alicuius diœcesis consistentibus, etiam si nullius diœcesis vel exempti esse dicantur, cuiquam, qui regularis subditus sibi non sit, Tonsuram vel minores Ordines conferre; nec ipsi Abbates et alii exempti, aut collegia vel capitula quœcumque, etiam ecclesiarum cathedralium, litteras dimissorias aliquibus Clericis sæcularibus, ut ab aliis ordinentur, concedant. Sed horum omnium ordinatio, servatis omnibus,*

*quæ in huius Sanctæ Synodi Decretis continentur, ad Episcopos, intra quorum dioecesis fines existant, pertineat; non obstantibus quibusvis privilegiis, præscriptionibus aut consuetudinibus etiam immemorabilibus. Pœnam quoque impositam iis, qui contra huius Sanctæ Synodi sub Paulo III. Decretum a capitulo episcopali sede vacante litteras dimissorias impetrant, ad illos, qui easdem litteras non a Capitulo, sed ab aliis quibusvis in jurisdictione Episcopi, loco Capituli sede vacante succedentibus, obtinerent, mandat extendi. Concedentes autem dimissorias contra formam Decreti ab Officio et Beneficio per annum sint ipso iure suspensi.*"

Sess. XIV, ex cap. 2, de Reform: "*Nemo Episcoporum, qui titulares vocantur, etiam si in loco nullius dioecesis, etiam exempto, aut aliquo monasterio cujusvis ordinis resederint, aut moram traxerint, vigore cujusvis privilegii sibi de promovendo quoscumque ad se venientes pro tempore concessi, alterius subditum, etiam prætextu familiaritatis continuæ commensalitatis suæ, absque sui proprii Prælati expresso consensu aut litteris dimissoriis, ad aliquos sacros aut minores Ordines vel primam Tonsuram promovere seu ordinare valeat. Contra faciens ab exercitio pontificalium per annum, taliter vero promotus ab executione Ordinum sic susceptorum, donec suo Prælato visum fuerit, ipso iure sint suspensi.*"

## Interdicuntur Episcopi, qui non denunciant Episcopos illegitime absentes.

Sess. VI, ex cap. 1, de Reform: "*Crescente vero contumacia* (Episcopi absentis ultra secundum semestre tempus) *ut severiori ss. canonum censuræ subiiciatur, Metropolitanus suffraganeos Episcopos absentes, Metropolitanum vero absentem suffraganeus Episcopus antiquior residens, sub pœna interdicti ingressus ecclesiæ eo ipso*

*incurrenda infra tres menses per litteras seu nuncium Romano Pontifici denunciare teneatur.*"

Sess. XXIII, ex cap. 14, de Reform: "*Episcopi quoque, quod absit, si ab huiusmodi crimine* (concubinatus) *non abstinuerint, et a synodo provinciali admoniti, se non emendaverint, ipso facto sint suspensi.*"

*Hactenus de Suspensionibus vel Interdictis a Synodo Tridentina inflictis. Sic autem prosequitur et explicit Constitutio Sanctissimi Patris de qua agimus.*

Quæ vero censuræ sive excommunicationis, sive suspensionis, sive interdicti, Nostris, aut Prædecessorum Nostrorum Constitutionibus, aut sacris canonibus præter eas, quas recensuimus, latæ sunt, atque hactenus in suo vigore perstiterunt sive pro Rom. Pontificis electione, sive pro interno regimine quorumcumque ordinum et institutorum regularium, nec non quorumcumque collegiorum, congregationum, cœtuum locorumque piorum cuiuscumque nominis aut generis sint, eas omnes firmas esse, et in suo robore permanere volumus et declaramus.

*a.* Ceterum decernimus, in novis quibuscumque concessionibus ac privilegiis, quæ ab Apostolica Sede concedi cuivis contigerit, nullo modo ac ratione intelligi umquam debere, aut posse comprehendi facultatem absolvendi a casibus et censuris quibuslibet Romano Pontifici reservatis, nisi de iis formalis, explicita, ac individua, mentio facta fuerit: quæ vero privilegia aut facultates, sive a Prædecessoribus Nostris, sive etiam a Nobis cuilibet Cœtui, Ordini, Congregationi, Societati, et Instituto, etiam regulari cuiusvis speciei, etsi titulo peculiari prædito, atque etiam speciali mentione digno a quovis umquam

tempore huc usque concessæ fuerint, ea omnia, easque omnes Nostra hac Constitutione revocatas, suppressas, et abolitas esse volumus, prout reapse revocamus, supprimimus, et abolemus, minime refragantibus aut obstantibus privilegiis quibuscumque, etiam specialibus, comprehensis, vel non, in corpore iuris, aut Apostolicis Constitutionibus, et quavis confirmatione Apostolica, vel immemorabili etiam consuetudine, aut alia quacumque firmitate roboratis quibuslibet etiam formis ac tenoribus, et cum quibusvis derogatoriis, aliisque efficacioribus et insolitis clausulis, quibus omnibus, quatenus opus sit, derogare intendimus et derogamus.

*b.* Firmam tamen esse volumus absolvendi facultatem a Tridentina Synodo Episcopis concessam Sess. XXIV cap. 6, de Reform. in quibuscumque censuris Apostolicæ Sedi hac Nostra Constitutione reservatis, iis tantum exceptis, quas eidem Apostolicæ Sedi speciali modo reservatas declaravimus.

Decernentes has Litteras, atque omnia et singula, quæ in eis constituta ac decreta sunt, omnesque et singulas, quæ in eisdem factæ sunt ex anterioribus Constitutionibus Prædecessorum nostrorum, atque etiam Nostris, aut ex aliis sacris Canonibus quibuscumque, etiam Conciliorum Generalium, et ipsius Tridentini, mutationes, derogationes, ratas et firmas, ac respective rata atque firma esse et fore, suosque plenarios et integros effectus obtinere; sicque et non aliter in præmissis per quoscumque Iudices Ordinarios, et Delegatos, etiam Causarum Palatii Apostolici Auditores, ac S. R. E. Cardinales, etiam de Latere Legatos, et Apostolicæ Sedis Nuntios, ac quosvis alios quacumque præeminentia, ac potestate fungentes, et functuros, sublata eis, et eorum cuilibet quavis aliter iudicandi et interpretandi

facultate et auctoritate, iudicari ac definiri debere; et irritum atque inane esse ac fore quidquid super his a quoquam quavis auctoritate, etiam prætextu cuiuslibet privilegii, aut consuetudinis inductæ vel inducendæ, quam abusum esse declaramus, scienter vel ignoranter contigerit attentari.

*c.* Non obstantibus præmissis, aliisque quibuslibet ordinationibus, constitutionibus, privilegiis, etiam speciali et individua mentione dignis, nec non consuetudinibus quibusvis, etiam immemorabilibus, ceterisque contrariis quibuscumque.

Nulli ergo omnino hominum liceat hanc paginam Nostræ Constitutionis, ordinationis, limitationis, suppressionis, derogationis, voluntatis infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare præsumpserit, indignationem Omnipotentis Dei et Beatorum Petri et Pauli Apostolorum eius, se noverit incursurum.

Datum Romæ apud S. Petrum anno Incarnationis Dominicæ Millesimo Octingentesimo Sexagesimo Nono, Quarto Idus Octobris, Pontificatus Nostri anno vigesimo quarto.

M. Card Mattei Pro-Datarius.

N. Card. Paracciani Clarelli

Visa de Curia.

*Dominicus Bruti*

Loco ✠ Plumbi I. Cugnoni.

*a.* This constitution only affects the censures *latæ sententiæ* which belong to the common law of the Church; it does not touch those which concern the election of the Roman Pontiff, the internal government of Religious Orders, colleges, congregations, and religious bodies and places.

*b.* Before this constitution was issued, regulars had permanent faculties for granting absolution from ordinary papal cases. These are abrogated now, but temporary and very wide faculties are still granted them for the same purpose.

*c.* Custom can not be pleaded against this constitution unless it arises when the circumstances are altogether changed.

# BOOK X

## IRREGULARITIES

### CHAPTER I

#### IRREGULARITY IN GENERAL

1. Some men are incapable of performing the duties attached to Orders, or, if not altogether incapable, they can not perform them with that decency and edification which their sacred character and the Church require. A blind man can not administer the sacraments, and one who has been guilty of great and notorious crimes is not a suitable person to exercise such holy offices, and guide others in the way of virtue. Certain defects, then, and crimes, partly from the nature of things, partly because the Church has so ordained, constitute a bar to the reception of Orders. These are called irregularities, and an irregularity is commonly defined to be a canonical impediment which primarily prevents the reception of Orders, and, secondarily, the lawful exercise of the duties and rights annexed to them. It is an impediment constituted by law, though it has its foundation in the nature of things, and so there can be no irregularity unless it is expressly sanctioned by law. It does not make the reception of Orders or their exercise invalid; it only makes these acts gravely sinful in one who is under irregularity, and forbids under pain of grave sin

the admission of such a one to the clerical state or the conferring of Orders on him. When Orders have been already received, an irregularity can only produce its secondary effect and hinder their lawful exercise. Even this effect has place only in respect of sacred Orders, for, according to present discipline, laymen may lawfully exercise the functions of the minor Orders, with the exception of those of the exorcist.

2. Irregularities are said to be *from defect* when they arise from an incapability of exercising the functions of Orders or from the indecency there would be in exercising them. They are said to be *from crime* when the Church has expressly laid down that the commission of such a crime shall entail irregularity in the delinquent.

Perpetual irregularity lasts for life unless it is removed by dispensation, and no dispensation can be granted for some irregularities arising from defect; temporary irregularity lasts only for a time and either ceases of itself, like that of age, or ceases by supplying the defect, as that arising from want of knowledge.

Irregularity which prevents the reception of Orders, and consequently the exercise of them, is said to be *total;* that which supervenes on the reception of Orders and only prevents their lawful exercise is *partial.*

3. As only males and those who are baptized can be validly ordained, the same two conditions are required in order to be subject to irregularity. There is nothing to prevent the same person from being subject to several different irregularities arising from different defects or crimes, nor from being subject to several irregularities of the same species arising from several crimes committed against different people, as from several homicides; but

otherwise only one irregularity is contracted from one and the same cause though several times repeated, and so a priest who while under suspension celebrates Mass several times, only incurs one irregularity.

Whenever there is a doubt either of law or of fact as to whether an irregularity has been incurred, almost all authorities agree that in practice it must be held not to have been incurred.

Irregularities from defect are incurred even by those who are ignorant of them, but, inasmuch as irregularities from crime suppose an external and grave sin to have been committed, ignorance of the law forbidding the act, and probably ignorance of the irregularity by which the crime is punished, will excuse from it, unless the ignorance be crass and supine.[1] For although, primarily, irregularities are an impediment, they are also of the nature of a penalty, which the Church is not presumed to inflict on those who did not know of its existence. If, however, infamy follows on the commission of crime, irregularity is then certainly the consequence.

Want of age in those who have not yet reached puberty and grave fear also excuse from incurring irregularities arising from crimes.

[1] Ignorance of an irregularity does not excuse from incurring it. C.J.C., can. 988.

## CHAPTER II

### IRREGULARITIES FROM DEFECT

The irregularities arising from defect are commonly reckoned eight in number. They are: defect of birth, mind, body, age, sacrament, freedom, lenity, and reputation. Something must be said about each.

1. Defect of birth arises from illegitimacy, when the parents are either not married at all, or their marriage in the eyes of the Church is null and void on account of some diriment impediment known to both parties. If the impediment was unknown to at least one of the parents, the marriage is called putative, and the offspring is legitimate. When there is a doubt concerning legitimacy, as in the case of foundlings, legitimacy may be presumed until the contrary is proved.

This irregularity ceases by legitimation, dispensation, and solemn religious profession. If the parents at the time of conception or birth of the child could have been married, the child is by ecclesiastical law legitimized by subsequent marriage; otherwise it can only be legitimized by the rescript of the Pope. A dispensation from this irregularity may be granted by the Pope, and by delegated authority by bishops, regular prelates, and others. Solemn religious profession takes away the irregularity as far as it is a bar to the reception of Orders, but not so as to enable the party to accept prelacies in the Order without dispensation.

2. Defect of mind arises from want of reason, sufficient knowledge, or assured stability in the Faith.

All who are habitually without the use of reason are irregular, as well as epileptics. One afflicted with epilepsy before puberty, but who afterward is free from attacks, so that he may be judged to have recovered, may be promoted to Orders. Similarly, if epilepsy comes on after ordination, the afflicted priest should not attempt to say Mass while he is subject to attacks, but he may be permitted to do so if in the judgment of superiors all danger has ceased.

Want of assured stability in the Faith causes irregularity in the case of neophytes who have been baptized in adult age. The period during which this irregularity lasts seems to be left to the judgment of the bishop.

3. Any bodily defect which makes it impossible to say Mass and fulfil the other functions of Orders, or prevents the person afflicted from exercising the sacred ministry with decency and edification, constitutes an irregularity. Thus the blind, deaf, mute, lame, crippled or maimed in limb or even necessary fingers, notably deformed, and those who can not drink wine, are irregular.

In case of doubt the bishop may decide as to whether a person is irregular, and in such a case he may dispense as far as is necessary. If the irregularity is certain, only the Pope or his delegate can dispense. A dispensation from this impediment is more easily granted after ordination than before, to enable a priest to exercise his functions.

Want of canonical age is a bar to ordination, as we saw when treating of the sacrament of Orders, but the irregularity ceases on the attainment of that age.

4. Marriage as a sacrament symbolizes the union of

Christ with His Church, but to represent that union perfectly it should be a marriage of one man with one woman. In a second marriage the representation is less perfect, and such a bigamous marriage gives rise to the irregularity from defect of the sacrament.

A man becomes irregular from true bigamy when he has had two wives in succession, and has consummated marriage with both.

Besides this true bigamy, there is also bigamy by legal fiction. Thus a man becomes guilty of interpretative bigamy who consummates an invalid marriage with a woman who is married but separated from her husband; or with a widow known by her former husband, or by another man out of wedlock; or who has carnal intercourse with his wife after she has been corrupted by another man.

A man becomes guilty of similitudinary bigamy who, after taking a solemn vow of chastity in religion, or by receiving sacred Orders, attempts and consummates marriage.

5. Defect of freedom arises from slavery, marriage, or the duties of an incompatible office, such as that of a judge or magistrate.

Slavery has ceased to be of practical importance, and a married man may be ordained provided that his wife freely consents, takes a vow of chastity, and, if young, so that there is danger of incontinence, enters into a Religious Order.

All who hold an office which renders them liable to be called upon to give in accounts are irregular until they are free from their obligations.

6. Defect of lenity may cause irregularity in three ways:

*a.* No one may be promoted to Orders, or, if he has them already, may exercise them, who freely, knowingly, efficaciously, and immediately, co-operates in inflicting death or mutilation on a criminal, justly condemned. On this account, judges, jurymen, witnesses, and accusers who freely offer themselves, and executioners, are irregular; but not those who make a law punishing criminals with capital punishment.

*b.* Soldiers who are laymen are irregular if in a just offensive war they kill with their own hand except in self-defense, when they enlisted voluntarily. Clerics who fight of their own accord are irregular if they kill with their own hand except in self-defense in a just war, offensive or defensive.

*c.* Clerics in sacred Orders and regulars are irregular, who exercise the medical or surgical art with cutting or burning so that they cause death, even inculpably. Doctors and surgeons who are laymen do not incur irregularity unless they are the cause of death by their grave fault.

7. Loss of reputation, or infamy, is a cause of irregularity. Those who are guilty of certain grave crimes are declared by canon law to be *ipso facto* infamous, sometimes together with their children and grandchildren. Such are those who fight a duel, and their seconds, abductors of women, those who strike cardinals of the Holy Roman Church, those who are guilty of real simony, heretics, and their accomplices.

Any one who, on account of a grave crime, as a matter of fact, loses his reputation is infamous and irregular. If, however, afterward by his good conduct he recovers his reputation in the judgment of the bishop, he ceases

to be irregular; but those who labor under infamy inflicted by law or by judicial sentence require a dispensation which is reserved to the Pope. Superiors of regular Orders by privilege can dispense their subjects from irregularity arising from any infamy.

## CHAPTER III

### IRREGULARITIES ARISING FROM CRIME

1. The iteration of Baptism is forbidden by divine and ecclesiastical law, and irregularity is incurred by an adult who is knowingly rebaptized, by him who rebaptizes, and by any cleric who officially assists at rebaptism. The irregularity, however, is not incurred unless the rebaptism is public and unconditional.

An adult who receives Baptism from a declared heretic, except in case of necessity, is also irregular.

2. A cleric who knowingly and with solemnity exercises the functions of one of the sacred Orders which he has not received, thereby becomes irregular. So that a subdeacon who administers holy communion or Baptism without necessity contracts irregularity. One, however, who preaches without leave, or grants a dispensation without the requisite faculty, does not incur irregularity.

3. A cleric who solemnly and rashly exercises the functions of one of the sacred Orders while he is under any sort of censure incurs irregularity. Ignorance, provided that it be not crass or supine, and whatever excuses from grave fault, also excuses from the irregularity.

4. All heretics and apostates from the Faith, who belong to any heretical sect, are irregular even after repentance and conversion. Catholics who fall into secret heresy are probably not irregular unless they are proclaimed as heretics.

Descendants to the second degree on the father's side, and to the first on the mother's, of heretics who belong to any heretical sect or who die in heresy, are irregular. This irregularity seems to arise from the infamy which is attached to heresy, and it ceases on the conversion of the parents.

Fautors, defenders, and receivers of heretics incur irregularity after they have been declared guilty by judicial sentence.

5. Whoever, by any unjust and gravely culpable action, directly or indirectly, physically or morally, are guilty of homicide, thereby contract irregularity. Even casual homicide produces irregularity if it is the effect of grave negligence. If any one is killed in an unjust war, all who fought on the other side contract irregularity, unless they were compelled to fight, or abstained from any action which could be the cause of death.

Whoever, by an unjust and gravely culpable action mutilates another by cutting off some principal member, contracts irregularity.

One who causes abortion, or co-operates therein, after the fetus is for certain animated, also incurs irregularity.

A cleric who is not a priest is made incapable of ascending to higher Orders if he violate the prescriptions of the decree S.C.C., May 11, 1904, concerning manual stipends for Mass.

## CHAPTER IV

### REMOVAL OF IRREGULARITIES

Several irregularities, especially of those which arise from defect, cease by the removal of the cause on which they rest. This is true of the irregularities arising from defect of age, knowledge, and assured faith in the case of neophytes.

The other irregularities, except those which the natural law demands, may be removed by dispensation of the competent authority. The Pope can dispense in all such irregularities, and he ordinarily does so through the various Roman congregations.

Bishops by their ordinary power can dispense their subjects from irregularities arising from secret crime except voluntary homicide, from doubtful irregularities, and from the irregularity arising from defect of birth to enable one who is illegitimate to receive minor Orders. By special indult they receive still more ample faculties from the Holy See. Regular confessors by a special privilege can dispense from those irregularities in which bishops can grant dispensations to their subjects, and besides, they receive special faculties for other cases.

All confessors who have ordinary faculties in missionary countries usually have delegated authority to grant dispensations in irregularities arising from secret crime, except voluntary homicide.

NOTE. — Very ample faculties for dispensing in irregularities are usually given to priests in the United States. Thus, in the archdiocese of St. Louis and in many other dioceses of this country, the *pagella* contains the following words: "*Dispensandi a quibuscunque irregularitatibus, exceptis illis quæ proveniunt ex bigamia vera, homicidio voluntario, vel ab exercitio ordinis aut jurisdictionis, dum quis ex sententia a Nobis prolata ab illo suspenditur.*" Accordingly, whether the irregularity arises "*ex delicto*" or "*ex defectu,*" whether it is occult or public, priests having the ordinary faculties of the diocese have power to dispense in it. There are only three exceptions. One occurs when there is true bigamy, *i.e.*, when a person has been twice married, each marriage being consummated, he incurs an irregularity from which he can not be dispensed under this faculty; and this, whether the bigamy was public or not. Secondly, when the homicide is voluntary, whether public or occult, this faculty does not empower a priest to dispense in the irregularity arising therefrom. A third exception occurs when the irregularity arises from the exercise of order or jurisdiction, after the cleric has been suspended from such exercise by the sentence of the ordinary of the diocese. It may be observed that the word, "*jurisdictionis,*" in the foregoing faculty does not mean mere jurisdiction, since an irregularity is not incurred by the exercise of jurisdiction alone, for example, by absolving from censures or dispensing in vows, but by an exercise of Orders. Hence when the term, "*jurisdictionis,*" is here employed in connection with irregularity, it means the exercise of an Order for whose exercise jurisdiction is required, *e.g.*, forgiveness of sins in the sacrament of Penance. Hence the meaning of this whole clause is that whether a

cleric exercises Orders alone, as in saying Mass, or Orders along with jurisdiction, as in hearing confessions, after being suspended by the ordinary from either one or the other, he can not be dispensed from the irregularity thus contracted by the authority communicated in this faculty. It is also deserving of notice that while this faculty is very extensive, having no exceptions but those three indicated above, yet there are some irregularities which impinge upon the divine law, and in which this faculty does not empower one to dispense. (See Putzer, Apost. Fac., n. 103; Gasparri, De Ordinatione, n. 233.) — END OF NOTE.

# BOOK XI

## INDULGENCES

### CHAPTER I

#### THE NATURE OF AN INDULGENCE

1. In every sin the teaching of the Catholic Church distinguishes two elements: the *guilt* and the *penalty* which it incurs. The guilt is the injury committed against God by the sinner and the displeasure with which God views the sinful act. If the sin is mortal, it deprives the soul of sanctifying grace and of God's friendship, so that a state of enmity exists between God and the sinner. A venial sin is an injury against God; it is the object of His displeasure, and is a stain on the soul, but it does not rob the soul of sanctifying grace or deprive it of the friendship of God. Besides this guilt a sin deserves and ordinarily receives punishment at the hands of God. It is a law of God's justice that wrong-doing entails suffering either in this world or in the world to come. It is the sanction which in the nature of things is annexed to the great moral law. The penalty for mortal sin, as befits the unrepenting and obstinate enemies of God, is eternal separation from Him and punishment in the fires of hell; the penalty for venial sin is temporary punishment in this world or in purgatory. These two elements in sin are not

only distinct from each other in thought; they may be, and frequently are, separated in reality. When God pardons mortal sin, the eternal penalty which it deserves in hell is also remitted, but we know from revelation that He frequently exacts from the sinner some temporary punishment for the serious offense which has been committed against Him and right order. The guilt of David's adultery was forgiven on his repentance, but he had to endure the loss of the child and other punishments. This is only in keeping with what we might expect at the hands of a wise Providence and with what observation of the order of nature teaches us. A man may truly repent of his sin and he may have the fullest confidence that God has pardoned it, but he knows that he will have to bear the sad effects of it till his dying day.

This distinction between the guilt of sin and the penalty due to it is necessary for the understanding of what is meant by an indulgence. An indulgence is not the forgiveness of the guilt of sin; much less is it a permission to commit sin. It is the remission of the temporal punishment which often remains due to sin after its guilt has been forgiven. An indulgence, then, can not be gained for unrepented sin, nor for sin of which the guilt still stains the soul. If, however, the guilt has been forgiven, any temporal punishment which remains to be suffered in consequence of it may be remitted by indulgences and by other means.

2. As the Catholic Church claims that her divine Founder empowered her ministers to forgive sin, provided that the sinner has the requisite dispositions, so she also lays claim to the power of remitting the temporal punishment due to sin both by the ministration of the sacraments and by

granting indulgences. From the first centuries of the Christian era her bishops have used the power to condone temporal punishment due to sin outside sacramental confession, and they have understood that this power was contained in the general power to bind and loose granted to the apostles and their successors by Our Lord. As the Pope has jurisdiction over the whole world, he can grant indulgences to all the faithful; a bishop can only grant indulgences to those who are within his diocese, and up to the limits imposed on him by the supreme authority of the Roman Pontiff.

The doctrine of indulgences is intimately connected with other dogmas of the Catholic faith. When the Church remits temporal punishment due to sin, she does not simply condone it outright in the name of God, but she pays the debt due to sin out of the treasure of the Church. This treasure of the Church is made up of the satisfactions of Our Lord and of His saints. Christ and all the members of His Church form one mystical body: "For as in one body we have many members but all the members have not the same office: so we being many, are one body in Christ, and every one members one of another." [1] "One body and one Spirit: as you are called in one hope of your calling. One Lord, one Faith, one Baptism. One God and Father of all, who is above all, and through all, and in us all." [2] By virtue of this oneness in Christ, there is among the faithful what is called the communion of saints. Not only do all get the benefit of the same sacrifice and sacraments, but the good works of each benefit to some extent all the rest. The merit, indeed, which every good action possesses with God, with a view to an eternal

[1] Rom. xii. 4. [2] Eph. iv. 4–6.

reward, is personal and belongs exclusively to the doer of it; but besides meriting, every good action has also a power of placating God and satisfying for sin, as well as a power of impetrating His graces and blessings. The satisfactory part of the good actions of Christ and His saints was not required to satisfy for their own offenses, and it is available to satisfy for the sins of those who form with them one mystical body. It needs, however, application to the individual soul, and one of the ways in which this is done is through indulgences. The dispensing of the mysteries of God belongs to the prelates of His Church, and inasmuch as they have jurisdiction over the faithful in this life, indulgences are applied to them directly by the power of the keys.

Over the faithful departed who are suffering for their sins in purgatory the Church has no jurisdiction, but as we can pray for them, and they are helped thereby, so if the Church permits it we can gain indulgences and apply them to the souls of the faithful departed by way of suffrage, asking God to accept the satisfaction offered for the holy souls.

3. A plenary indulgence is one by which all the debt of temporal punishment due to a person for his sins is remitted, while a partial indulgence, of say forty days, remits the same amount of temporal punishment which would have been remitted by undergoing canonical penance for forty days according to the ancient discipline of the Church.

Indulgences are local, if they can only be gained in a particular place, as by visiting some particular church; they are personal, if they are attached to certain persons who fulfil certain conditions; they are real, if they are

attached to a particular object, as to a crucifix or a rosary.

Again they are temporary, if they can only be gained within a specified time; if granted without any time limit, they are perpetual.

## CHAPTER II

### CONDITIONS REQUIRED FOR GAINING INDULGENCES

1. THERE must always be a just cause for granting an indulgence, otherwise the grantor would not be a faithful dispenser of the mysteries of God, and he would fail in the trust committed to him by God. In practice, however, this does not concern the faithful to whom indulgences are granted; they may rest assured that there is always a just cause for the indulgences which the Church offers for their acceptance.

2. No one can gain an indulgence unless he is a member of the Catholic Church, and, moreover, he must have the requisite intention, he must be in the state of grace, and he must fulfil all the conditions prescribed for gaining the indulgence.

It is not necessary that the intention be actual; it is sufficient if it be virtual, so that there was the wish to gain the indulgence, and it continues to influence the actions whose performance is required for the purpose of gaining the indulgence. It will be sufficient to form an intention in the morning of gaining all the indulgences which may be annexed to any of the good works done during the following day. Some authorities hold that such a virtual intention is not necessary, but that an habitual, or even an interpretative intention, will suffice. An habitual intention is one which was formed and which

has not been retracted, but which does not influence the performance of one's actions any longer. An interpretative intention does not exist in reality, but it would be elicited if the agent thought of the matter. Inasmuch as an indulgence is a grant made by the Church to all who fulfil certain conditions, these authors maintain that all pious Catholics who value indulgences gain such as are annexed to their prayers and other good deeds without any special intention. This opinion, however, though probable, is not certain, and so it is safer in practice to follow the other, which requires at least a virtual intention, especially as it is doubtful whether probabilism can be used in this matter.

3. The person who gains an indulgence must also be in the state of grace, for one who is in mortal sin, at enmity with God, and liable to eternal punishment, is not a fit subject for the remission of temporal punishment due to his sins. The Church, too, requires that those who wish to gain the indulgences which she offers to her children should be contrite in heart, or, in other words, in the state of grace, recovered, if they had fallen, by means of sacramental confession, or at least by an act of perfect contrition. When several actions, such as visiting a church, prayer for the Pope, confession, etc., are prescribed for gaining an indulgence, it is not absolutely necessary that all such actions be performed while the agent is in the state of grace; it will be sufficient if the soul be in the state of grace when the last condition is fulfilled, and when the indulgence is applied.

4. Finally, all the conditions laid down by him who granted the indulgence must be faithfully fulfilled by any one who wishes to gain it. If the indulgence be annexed

to the saying of a prayer, the prayer must be said with the lips; it is not sufficient to repeat it mentally. Deaf-mutes may obtain from their confessors a commutation of vocal prayers into other good works, and if one of the conditions for gaining an indulgence is visiting a church and praying therein for the intentions of the Holy Father, they may fulfil this condition by visiting the church and praying mentally.

The ordinary conditions prescribed for gaining a plenary indulgence are: prayer for the intentions of the Sovereign Pontiff, visit to a church, and confession and holy communion.

To satisfy the condition of prayer for the intentions of the Pope, any form of prayer which is not already of obligation will suffice. A priest, therefore, could not satisfy this condition by saying his breviary to which he is already bound by the law of the Church, but it has been decided that when indulgenced prayers are prescribed by a confessor for sacramental penance, the penitent may say his penance and gain the indulgence at the same time. The length of prayer for the Pope's intention is not ordinarily defined, but authors are agreed that five Our Fathers and five Hail Marys will suffice. The Pope's intentions are: the common good of the Church, the propagation of the Faith, the conversion of sinners, heretics, and schismatics, and peace and concord among Christian peoples. To gain the indulgence it is not necessary to have these intentions distinctly in mind; it will be sufficient to pray for the Pope's intentions in general.

The prayers may be said alone or with others alternately, and they may be said anywhere, unless it is specially prescribed that they are to be said while visiting the church,

Unless some special church is mentioned for the visit, any church or public oratory to which the public have free access may be selected. Semipublic oratories of religious communities and private chapels will not suffice, unless by special indult.

5. When confession is prescribed, it must be made even if the penitent has only venial sins to confess, though absolution is not necessary.[1] Those who are in the habit of confessing once a week may gain thereby all the indulgences occurring during the week for which confession is a condition, and some bishops have an indult by which they can extend this privilege to those of their subjects who confess every fortnight.[2] Daily communicants may gain indulgences, even though on some days they omit holy communion, without fulfilling the condition of weekly confession.[3]

It has been specially provided that the Easter communion, though of obligation, suffices for gaining indulgences of which communion is a condition, except the Jubilee.

When a particular day is designated as that on which an indulgence may be gained, the natural day from midnight to midnight is understood, and *per se* the conditions must be fulfilled within that time. However, when an indulgence is granted for a particular feast, as a rule the conditions may be fulfilled after the hour of first Vespers, or midway between midday

[1] The confession required for gaining some indulgence may now be made on any day within the eight days preceding or succeeding the feast, and the communion not only on the feast, but either on the eve or during the octave. C.J.C., can. 931, sec. 1.

[2] Confession twice a month is now sufficient for gaining all indulgences in the month for which confession is prescribed. C.J.C., can. 931, sec. 3.

[3] Sacred Congregation of Indulgences, February 14, 1906.

and sunset of the eve of the feast. Confession and communion on the eve suffice for gaining an indulgence on the following day, and by special indult confession for gaining the Portiuncula indulgence may be made on or after July 30, and that for the indulgence granted on the feast of the Rosary on or after the preceding Friday.

The conditions enjoined may be fulfilled in any order.

6. According to the general rule, an indulgence can only be gained once on the day designated, but not infrequently an indulgence is granted *toties quoties*, and then it may be gained as often as the conditions are fulfilled. In this case if confession and communion, or in general any good work which is not capable of being repeated on the same day, be among the conditions prescribed, such conditions are only fulfilled once, and the others are repeated as often as it is desired to gain the indulgence. When several indulgences are attached to the same action, and this can not be repeated, as is the case with holy communion, all the indulgences may be gained by the one action. If, however, the action enriched by several sets of indulgences be capable of being repeated on the same day, such as saying the rosary, as a general rule only one set of indulgences determined by him who wishes to gain them can be gained by performing the action once. Pius X, however, by a decree dated June 12, 1907, made an exception to this rule in favor of rosaries enriched with the Crosiers' indulgences, which may now be gained in reciting the rosary cumulatively, together with other indulgences already granted to the same rosaries.

It must frequently happen that plenary indulgences can not be gained in full on account of some obstacle in

the way, such as unforgiven venial sin. In such a case it is commonly held that according to the intention of the Church the indulgence takes its effect as far as possible, and becomes in fact a partial indulgence.[1]

7. Almost all indulgences are now applicable to the souls in purgatory. In order that they may be applied to them in fact, the person who fulfils the conditions should form his intention of offering them to God for the benefit of certain souls, or for the benefit of the souls in purgatory in general. It is a controverted point among the theologians whether such application is infallible in its effect or not. The difficulty is about the divine promise to accept such offerings, some theologians holding that such a promise is implicitly contained in the words of Our Lord: "Whatsoever you shall loose on earth shall be loosed also in heaven"; others denying this. The negative opinion seems to be more in accordance with the mind and practice of the Church.

Similarly, it is a disputed question among theologians whether one who gains an indulgence for the souls in purgatory must himself be in the state of grace. Many hold that he must be, as he must gain the indulgence himself before he can apply it to the holy souls. Others do not see the necessity of this, for such a one only fulfils the conditions, and on the fulfilment of these the Church offers to God the corresponding satisfactions. Both opinions are probable, but the former is safer in practice.

8. Objects to be indulgenced should be solid and not easily breakable. Hence pictures on paper, and hollow glass beads, may not be indulgenced; but beads made of solid glass, or of iron, or wood, may be.

[1] It is now certain that a plenary indulgence may become partial, when through some defect in him who tries to gain it, it can not be gained fully. C.J.C., can. 926.

Objects do not lose their indulgences as long as they remain morally the same. In a rosary the indulgences are attached to the beads, not to the string, so that even though the string be changed, or a few beads be lost and others substituted for them, the indulgences are not lost. When a crucifix is indulgenced, the indulgence is attached to the image, not to the cross.

To prevent the danger of simony, indulgences attached to a movable object are lost if its ownership is transferred to a person different from the one for whom it was indulgenced. This, however, does not hinder the lending of a rosary to another so that he may use it to say his beads, for there is in such an act no intention of transferring the indulgence.

## CHAPTER III

### THE JUBILEE

1. A JUBILEE is a plenary indulgence granted by the Pope with greater solemnity than usual for a definite time, together with special faculties for confessors. The first jubilee was granted by Boniface VIII in the year 1300 with the intention that it should be held thereafter every hundred years, but subsequent Popes changed the period into fifty, thirty-three, and finally into twenty-five years. This is called a greater or ordinary jubilee, to distinguish it from the less or extraordinary jubilee, which the Pope grants on some special occasion, as, to celebrate his election to the papacy. A general jubilee is granted to all the faithful, usually in the first place at Rome, and afterward it is extended to the rest of the world; a particular jubilee is granted to a particular province or Religious Order.

2. The conditions prescribed for gaining an ordinary jubilee are: confession, communion, and prayer for the Pope's intentions in churches to be visited for the purpose a certain number of times.

Confession is necessary for those who wish to gain the jubilee even if they are not conscious of mortal sin, and the annual confession which is prescribed by ecclesiastical law will not suffice. If a grievous sin is inadvertently omitted from the jubilee confession, this is nevertheless

sufficient for gaining the indulgence, but of course the sin which was forgotten must be mentioned in the next confession. If, after going to confession and before fulfilling the other conditions for gaining the jubilee, mortal sin is committed, the person should go again to confession to gain the indulgence.

A good communion distinct from the ordinary Easter communion is another of the conditions to be fulfilled.

At Rome the four basilicas, St. Peter's, St. Paul's outside the Walls, St. John Lateran, and St. Mary Major, are usually designated to be visited a certain number of times, and during the visits prayer is to be offered up for the Pope's intention. Outside Rome the churches to be visited are usually left to be determined by the bishop. The visits must be made in one day according either to the civil or the ecclesiastical method of reckoning, or, in other words, reckoning either from midnight to midnight, or from the hour of vespers.

For an extraordinary jubilee, besides the above conditions, fasting and almsgiving are also prescribed.

The fast is a strict one, comprising not only abstinence from flesh meat, but also from eggs and *lacticinia*. A day which is not a fasting day by ecclesiastical law must be chosen, unless the contrary is specially conceded in the bull of indiction of the jubilee, and then the strict fast must be observed, nor can advantage be taken of any indult. Even those who are not bound by the ecclesiastical law of fasting must fulfil this condition if they wish to gain the jubilee.

The amount to be given in alms is not generally specified, and any amount will suffice provided that it is not so small as not to deserve the name. Religious, wives, children,

and servants, may have their obligation fulfilled for them by superiors, husbands, parents, and masters.

Bishops and confessors receive faculties to commute all the above conditions for ordinary and extraordinary jubilees except prayer, confession, and sometimes holy communion. For the lawful and valid use of this faculty there should always be a just cause, and some good work of more or less equal merit should be enjoined in place of that commuted.

3. Regulars who desire to gain the jubilee may choose a confessor from among those, whether secular or regular, who are approved by the bishop, or they may confess to one approved by their superiors. Nuns are sometimes empowered to choose a confessor for the purpose of gaining the jubilee from any priests approved by the bishop; sometimes it is prescribed that the confessor chosen must be one of those who are approved for the confessions of nuns. Confession may be made to the priest thus chosen as often as the penitent desires before the fulfilment of the last condition for gaining the jubilee, but not afterward.

The confessor chosen for the jubilee confession has special faculties given to him by the bull of indiction. This should always be carefully studied in order that the confessor may know the extent of his powers. Ordinarily, he is empowered to absolve penitents from all censures and sins, even those that are reserved. The cases of attempted absolution of an accomplice and a false charge of solicitation are generally excepted, or power to absolve them is only granted under restriction. The absolution would be valid if the penitent who came to confession with the intention of gaining the jubilee afterward changed his mind and gave up the attempt; and probably the reservation would be removed if a reserved sin were confessed by such

a penitent, though the confession were sacrilegious, or inculpably null and void.

Jubilee confessors have also ample faculties granted them for dispensing from vows or commuting them, though vows of perpetual chastity, of entering a Religious Order with solemn vows, and those which have been accepted by third parties, are usually excepted.

While the greater jubilee is being celebrated at Rome, the special faculties granted to bishops and priests for the internal forum are ordinarily suspended, at least with respect to penitents who can make the journey to Rome.

In the same way during this time other indulgences granted by the Pope in favor of the faithful who are living are suspended, though they may all be gained for the faithful departed. Certain special indulgences, as those for the saying of the Angelus, those granted to the dying, and for the solemn exposition of the Blessed Sacrament, are excepted.

# APPENDIX A

## PROHIBITED BOOKS

The modern law of the Church concerning forbidden books is contained in the Index published by order of Leo XIII in the year 1900. It is divided into two parts, the first of which contains the general constitution of Leo XIII on forbidden books, first issued in 1897, together with the constitution of Benedict XIV on the censorship of books; the second part consists of an alphabetical list of books which have been specially condemned. It will be sufficient for our purpose to say a word on the binding force of this new Index in English-speaking countries, and then print the authorized translation of the constitution of Leo XIII which contains the general laws now in force on the subject of forbidden books.

All Catholics must admit that if the Roman Pontiff, while promulgating a new law at Rome, makes known his will to bind thereby all the faithful throughout the world, there can be no question but that all are in fact bound by the new law. The constitution *Apostolicæ Sedis* of Pius IX was promulgated in this way at Rome for the whole world, and now without doubt binds all Catholics. In the same way the constitution of Leo XIII was promulgated in Rome and the Pope clearly made known his intention to bind all Catholics throughout the world by its provisions. Thus in the preamble of this constitution the Pope says:

"We have decided to issue the following general decrees appended to this constitution, . . . and all Catholics throughout the world shall strictly obey them." Among these general decrees, No. 45 is couched in these words: "Books condemned by the Apostolic See are to be considered as prohibited all over the world, and into whatever language they may be translated." In the constitution *Romani Pontifices*, September 17, 1900, by which Leo XIII prefaced his new Index, the Pope says: "*Hujusmodi igitur librorum prohibitorum generalem Indicem, jussu Nostro recognitum et emendatum, ac typis vaticanis impressum, quem tamquam litteris hisce expresse insertum haberi volumus, auctoritate apostolica, tenore præsentium, approbamus et confirmamus, atque ab omnibus ubique locorum integre et inviolabiliter observari præcipimus, sub pœnis in Constitutione Nostra* Officiorum ac munerum *sancitis.*" Furthermore, the Sacred Congregation of the Index, May 19, 1898, answered *Affirmative* to this question proposed to it: Whether the said constitution is of binding force even in English-speaking countries which some think enjoy a tacit dispensation. From the point of view of canon law and theology, there can be no question about the matter; the new Index is certainly of binding force throughout the world, and therefore also in English-speaking countries. This was immediately recognized by the bishops of the province of Westminster, and they at once explained to the Holy See the great difficulties which beset the observance of the law in England. To meet these difficulties, by a rescript of Propaganda, May 31, 1897, the English bishops were empowered to grant dispensations to those of their subjects who should ask for it to read forbidden books. In some of the dioceses the bishops delegate this power of

dispensing to all their priests who have diocesan faculties. It should, of course, be used with prudence and discretion, and it does not extend to the natural law which forbids any one to expose himself to the danger of sin without just cause.

## APOSTOLIC CONSTITUTION OF

## OUR HOLY FATHER POPE LEO XIII

### CONCERNING THE PROHIBITION AND CENSORSHIP OF BOOKS [1]

LEO, Bishop

Servant of the Servants of God

*For a Perpetual Memorial*

Of all the official duties which We are bound most carefully and most diligently to fulfil in this supreme position of the Apostolate, the chief and principal duty is to watch assiduously and earnestly to strive that the integrity of Christian faith and morals may suffer no diminution. And this, more than at any other time, is especially necessary in these days, when men's minds and characters are so unrestrained that almost every doctrine which Jesus Christ, the Saviour of mankind, has committed to the custody of His Church, for the welfare of the human race, is daily called into question and doubt. In this warfare, many and varied are the stratagems and hurtful devices of the enemy; but most perilous of all is the uncurbed freedom of writing and publishing noxious literature. Nothing can be conceived more pernicious, more apt to defile souls, through its contempt of religion and its manifold allure-

[1] Authorized translation.

ments to sin. Wherefore the Church, who is the custodian and vindicator of the integrity of faith and morals, fearful of so great an evil, has from an early date realized that remedies must be applied against this plague; and for this reason she has ever striven, as far as lay in her power, to restrain men from the reading of bad books, as from a deadly poison. The early days of the Church were witnesses to the earnest zeal of St. Paul in this respect; and every subsequent age has witnessed the vigilance of the Fathers, the commands of the bishops, and the decrees of councils in a similar direction.

Historical documents bear special witness to the care and diligence with which the Roman pontiffs have watchfully endeavored to prevent the spread of heretical writings detrimental to the public. History is full of examples. Anastasius I solemnly condemned the more dangerous writings of Origen, Innocent I those of Pelagius, Leo the Great all the works of the Manicheans. The *decretal* letters opportunely issued by Gelasius, concerning books to be received and rejected, are well known. And so, in the course of centuries, the Holy See condemned the pestilent writings of the Monothelites, of Abelard, Marsilius Patavinus, Wyclif, and Huss.

In the fifteenth century, after the invention of the art of printing, not only were bad publications which had already appeared condemned, but precautions began to be taken against the publication of similar works in the future. These prudent measures were called for by no slight cause, but rather by the need of protecting the public morals and welfare at the time; for too many had rapidly perverted into a mighty engine of destruction an art which was excellent in itself, productive of immense advantages, and

naturally destined for the advancement of Christian culture. Owing to the rapid process of publication, the great evil of bad books had been multiplied and accelerated. Wherefore Our predecessors Alexander VI and Leo X most wisely promulgated certain definite laws, well suited to the character of the times, in order to restrain printers and publishers within the limits of their duty.

The tempest soon became more violent, and it was necessary to check the contagion of heresy with still more vigilance and severity. Hence Leo X and afterward Clement VII severely prohibited the reading or retaining of the books of Luther. But as, owing to the unhappy circumstances of that epoch, the foul flood of pernicious books had increased beyond measure and spread in all directions, there appeared to be need of a more complete and efficacious remedy. This remedy Our predecessor Paul IV was the first to employ, by opportunely publishing a list of books and other writings, against which the faithful should be warned. A little later the Council of Trent took steps to restrain the ever-growing license of writing and reading by a new measure. At its command and desire, certain chosen prelates and theologians not only applied themselves to increasing and perfecting the Index which Paul IV had published, but also drew up certain rules to be observed in the publishing, reading, and use of books; and to these rules Pius IV added the sanction of his apostolic authority.

The interests of the public welfare, which had given rise to the Tridentine Rules, necessitated in the course of time certain alterations. For which reason the Roman Pontiffs, especially Clement VIII, Alexander VII, and Benedict XIV, mindful of the circumstances of the period and the dictates

of prudence, issued several decrees calculated to elucidate these rules and to accommodate them to the times.

The above facts clearly prove that the chief care of the Roman Pontiffs has always been to protect civil society from erroneous beliefs and corrupt morals, the twin causes of the decline and ruin of states, which commonly owes its origin and its progress to bad books. Their labors were not unfruitful, so long as the divine law regulated the commands and prohibitions of civil government, and the rulers of states acted in unison with the ecclesiastical authority.

Every one is aware of the subsequent course of events. As circumstances and men's minds gradually altered, the Church, with her wonted prudence, observing the character of the period, took those steps which appeared most expedient and best calculated to promote the salvation of men. Several prescriptions of the rules of the Index, which appeared to have lost their original opportuneness, she either abolished by decree, or, with equal gentleness and wisdom, permitted them to grow obsolete. In recent times, Pius IX, in a letter to the archbishops and bishops of the States of the Church, considerably mitigated Rule X. Moreover, on the eve of the Vatican Council, he instructed the learned men of the preparatory commission to examine and revise all the rules of the Index, and to advise how they should be dealt with. They unanimously decided that the rules required alteration; and several of the Fathers of the council openly professed their agreement with this opinion and desire. A letter of the French bishops exists urging the necessity of immediate action in "republishing the rules and the whole scheme of the Index in an entirely new form, better suited to our times and easier to observe." A similar opinion was expressed at the same time by the bishops of

Germany, who definitely petitioned that "the rules of the Index might be submitted to a fresh revision and arrangement." With these bishops many bishops of Italy and other countries have agreed.

Taking into account the circumstances of our times, the conditions of society, and popular customs, all these requests are certainly justified and in accordance with the maternal affection of Holy Church. In the rapid race of intellect, there is no field of knowledge in which literature has not run riot; hence, the daily inundation of most pernicious books. Worst of all, the civil laws not only connive at this serious evil, but allow it the widest license. Thus, on the one hand, many minds are in a state of anxiety; whilst, on the other, there is unlimited opportunity for every kind of reading.

Believing that some remedy ought to be applied to these evils, We have thought well to take two steps which will supply a certain and clear rule of action in this matter. Firstly, to diligently revise the Index of books forbidden to be read; and We have ordered this revised edition to be published when complete. Secondly, We have turned our attention to the rules themselves, and have determined, without altering their nature, to make them somewhat milder, so that it can not be difficult or irksome for any person of good will to obey them. In this We have not only followed the example of Our predecessors, but imitated the maternal affection of the Church, who desires nothing more earnestly than to show herself indulgent, and, in the present as in the past, ever cares for her children in such a manner as gently and lovingly to have regard to their weakness.

Wherefore, after mature deliberation, and having con-

sulted the cardinals of the Sacred Congregation of the Index, We have decided to issue the following general decrees appended to this constitution; and the aforesaid Sacred Congregation shall, in the future, follow these exclusively, and all Catholics throughout the world shall strictly obey them. We will that they alone shall have the force of law, abrogating the rules published by order of the sacred Council of Trent, and the observations, instruction, decrees, monita, and all other statutes and commands whatsoever of Our Predecessors, with the sole exception of the constitution *Sollicita et provida* of Benedict XIV, which We will to retain in the future the full force which it has hitherto had.

## General Decrees Concerning the Prohibition and Censorship of Books

### Article I

#### OF THE PROHIBITION OF BOOKS

*The Prohibited Books of Apostates, Heretics, Schismatics, and other Writers*

1. All books condemned before the year 1600 by the Sovereign Pontiffs, or by œcumenical councils, and which are not recorded in the new Index, must be considered as condemned in the same manner as formerly: with the exception of such as are permitted by the present general decrees.

2. The books of apostates, heretics, schismatics, and all writers whatsoever, defending heresy or schism, or in any way attacking the foundations of religion, are altogether prohibited.

3. Moreover, the books of non-Catholics, *ex professo* treating of religion, are prohibited, unless they clearly contain nothing contrary to Catholic faith.

4. The books of the above-mentioned writers, not treating *ex professo* of religion, but only touching incidentally upon the truths of Faith, are not to be considered as prohibited by ecclesiastical law, unless proscribed by special decree.

*Editions of the Original Text of Holy Scripture and of Versions not in the Vernacular*

5. Editions of the original text and of the ancient Catholic versions of Holy Scripture, as well as those of the Eastern Church, if published by non-Catholics, even though apparently edited in a faithful and complete manner, are allowed only to those engaged in theological and biblical studies, provided also that the dogmas of Catholic faith are not impugned in the prolegomena or annotations.

6. In the same manner, and under the same conditions, other versions of the Holy Bible, whether in Latin, or in any other dead language, published by non-Catholics, are permitted.

*Vernacular Versions of Holy Scripture*

7. As it has been clearly shown by experience that, if the Holy Bible in the vernacular is generally permitted without any distinction, more harm than utility is thereby caused; owing to human temerity: all versions in the vernacular, even by Catholics, are altogether prohibited, unless approved by the Holy See, or published, under the vigilant care of the bishops, with annotations taken from the Fathers of the Church and learned Catholic writers.

8. All versions of the Holy Bible, in any vernacular language, made by non-Catholics, are prohibited; and especially those published by the Bible societies, which have been more than once condemned by the Roman Pontiffs, because in them the wise laws of the Church concerning the publication of the sacred books are entirely disregarded.

Nevertheless, these versions are permitted to students of theological or biblical science, under the conditions laid down above (No. 5).

### *Obscene Books*

9. Books which professedly treat of, narrate, or teach lewd or obscene subjects, are entirely prohibited, since care must be taken, not only of faith, but also of morals, which are easily corrupted by the reading of such books.

10. The books of classical authors, whether ancient or modern, if disfigured with the same stain of indecency, are, on account of the elegance and beauty of their diction, permitted only to those who are justified on account of their duty or the function of teaching; but on no account may they be placed in the hands of, or taught to, boys or youths, unless carefully expurgated.

### *Certain Special Kinds of Books*

11. Those books are condemned which are derogatory to Almighty God, or, to the Blessed Virgin Mary or the saints, or to the Catholic Church and her worship, or to the sacraments, or to the Holy See. To the same condemnation are subject those works in which the idea of the inspiration of Holy Scripture is perverted, or its extension too narrowly limited. Those books, moreover, are prohibited which

professedly revile the ecclesiastical hierarchy, or the clerical or religious state.

12. It is forbidden to publish, read, or keep books in which sorcery, divination, magic, the evocation of spirits, and other superstitions of this kind are taught or commended.

13. Books or other writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext of being private ones, if published without the legitimate permission of ecclesiastical superiors, are prohibited.

14. Those books, moreover, are prohibited which defend as lawful, duelling, suicide, or divorce; which treat of Freemasonry, or other societies of the kind, teaching them to be useful and not injurious to the Church and to society; and those which defend errors proscribed by the Apostolic See.

*Sacred Pictures and Indulgences*

15. Pictures, in any style of printing, of Our Lord Jesus Christ, the Blessed Virgin Mary, the angels and saints, or other servants of God, which are not conformable to the sense and decrees of the Church, are entirely forbidden. New pictures, whether produced with or without prayers annexed, may not be published without permission of ecclesiastical authority.

16. It is forbidden to all to give publicity in any way to apocryphal indulgences, and such as have been proscribed or revoked by the Apostolic See. Those which have already been published must be withdrawn from the hands of the faithful.

17. No books of indulgences, or compendiums, pam-

phlets, leaflets, etc., containing grants of indulgences, may be published without permission of competent authority.

*Liturgical Books and Prayer-books*

18. In authentic editions of the missal, breviary, ritual, ceremonial of bishops, Roman pontifical, and of other liturgical books approved by the Holy Apostolic See, no one shall presume to make any change whatsoever; otherwise such new editions are prohibited.

19. No Litanies — except the ancient and common litanies contained in the breviaries, missals, pontificals, and rituals, as well as the Litany of Loreto, and the Litany of the Holy Name of Jesus already approved by the Holy See — may be published without the examination and approbation of the ordinary.

20. No one, without license of legitimate authority, may publish books or pamphlets of prayers, devotions, or religious, moral, ascetic, or mystic doctrine and instruction, or others of like nature, even though apparently conducive to the fostering of piety among Christian people; otherwise they are to be considered as prohibited.

*Newspapers and Periodicals*

21. Newspapers and periodicals which designedly attack religion or morality are to be held as prohibited, not only by the natural, but also by the ecclesiastical law.

Ordinaries shall take care, whenever it be necessary, that the faithful be warned against the danger and injury of reading of this kind.

22. No Catholics, particularly ecclesiastics, shall pub-

lish anything in newspapers or periodicals of this character, unless for some just and reasonable cause.

*Permission to Read and Keep Prohibited Books*

23. Those only shall be allowed to read and keep books prohibited, either by special decrees, or by these general decrees, who shall have obtained the necessary permission, either from the Apostolic See or from its delegates.

24. The Roman Pontiffs have placed the power of granting licenses for the reading and keeping of prohibited books in the hands of the Sacred Congregation of the Index. Nevertheless the same power is enjoyed both by the Supreme Congregation of the Holy Office, and by the Sacred Congregation of Propaganda for regions subject to its administration. For the city of Rome this power belongs also to the master of the sacred apostolic palace.

25. Bishops and other prelates with quasi-episcopal jurisdiction may grant such license for individual books, and in urgent cases only. But if they have obtained from the Apostolic See a general faculty to grant permission to the faithful to read and keep prohibited books, they must grant this only with discretion and for a just and reasonable cause.

26. Those who have obtained apostolic faculties to read and keep prohibited books may not on this account read and keep any books whatsoever or periodicals condemned by the local ordinaries, unless in the apostolic indult express permission be given to read and keep books by whomsoever prohibited. And those who have obtained permission to read prohibited books must remember that they are bound by grave precept to keep books of this kind in such a manner that they may not fall into the hands of others.

*The Denunciation of Bad Books*

27. Although all Catholics, especially the more learned, ought to denounce pernicious books either to the bishops or to the Holy See, this duty belongs more especially to apostolic nuncios and delegates, local ordinaries, and rectors of universities.

28. It is expedient, in denouncing bad books, that not only the title of the book be expressed, but also, as far as possible, the reasons be explained why the book is considered worthy of censure. Those to whom the denunciation is made will remember that it is their duty to keep secret the names of the denouncers.

29. Ordinaries, acting even as delegates of the Apostolic See, must be careful to prohibit evil books or other writings published or circulated in their dioceses, and to withdraw them from the hands of the faithful. Such works and writings as appear to require a more careful examination, or concerning which a decision of the Supreme Authority may seem desirable in order to procure a more salutary effect, should be referred to the judgment of the Apostolic See.

## Article II

## The Censorship of Books

*The Prelates Entrusted with the Censorship of Books*

30. From what has been laid down above (No. 7), it is sufficiently clear what persons have authority to approve or permit editions and translations of the Holy Bible.

31. No one shall venture to republish books condemned by the Apostolic See. If, for a grave and reasonable cause, any particular exception appears desirable in this respect, this can only be allowed on ob-

taining beforehand a license from the Sacred Congregation of the Index and observing the conditions prescribed by it.

32. Whatsoever pertains in any way to causes of beatification and canonization of the servants of God may not be published without the approval of the Congregation of Sacred Rites.

33. The same must be said of collections of decrees of the various Roman congregations: such collections may not be published without first obtaining the license of the authorities of each congregation, and observing the conditions by them prescribed.

34. Vicars-apostolic and missionaries-apostolic shall faithfully observe the decrees of the Sacred Congregation of Propaganda concerning the publication of books.

35. The approbation of books of which the censorship is not reserved by the present decrees either to the Holy See or to the Roman congregations, belongs to the ordinary of the place where they are published.[1]

36. Regulars must remember that, in addition to the license of the bishop, they are bound by a decree of the Sacred Council of Trent to obtain leave for publishing any work from their own Superior. Both permissions must be printed either at the beginning or at the end of the book.

37. If an author, living in Rome, desires to print a book, not in the city of Rome but elsewhere, no other approbation is required beyond that of the cardinal-vicar and the master of the apostolic palace.

[1] Leave to publish books may now be granted either by the ordinary of the author, or by the ordinary of the place where they are printed or published. C.J.C., can. 1385, sec. 2.

### *The Duty of Censors in the Preliminary Examination of Books*

38. Bishops, whose duty it is to grant permission for the printing of books, shall take care to employ in the examination of them men of acknowledged piety and learning, concerning whose faith and honesty they may feel sure that they will show neither favor nor ill will, but, putting aside all human affections, will look only to the glory of God and the welfare of the people.

39. Censors must understand that, in the matter of various opinions and systems, they are bound to judge with a mind free from all prejudice, according to the precept of Benedict XIV. Therefore they should put away all attachment to their particular country, family, school, or institute, and lay aside all partisan spirit. They must keep before their eyes nothing but the dogmas of Holy Church, and the common Catholic doctrine, as contained in the decrees of general councils, the constitutions of the Roman Pontiffs, and the unanimous teaching of the Doctors of the Church.

40. If, after this examination, no objection appears to the publication of the book, the ordinary shall grant to the author, in writing and without any fee whatsoever, a license to publish, which shall be printed either at the beginning or at the end of the work.

### *The Books to be Submitted to Censorship*

41. All the faithful are bound to submit to preliminary ecclesiastical censorship at least those books which treat of Holy Scripture, sacred theology, ecclesiastical history, canon law, natural theology, ethics, and other religious or

moral subjects of this character; and in general all writings specially concerned with religion and morality.

42. The secular clergy, in order to give an example of respect toward their ordinaries, ought not to publish books, even when treating of merely natural arts and sciences, without their knowledge.

They are also prohibited from undertaking the management of newspapers or periodicals without the previous permission of their ordinaries.

### *Printers and Publishers of Books*

43. No book liable to ecclesiastical censorship may be printed unless it bear at the beginning the name and surname of both the author and the publisher, together with the place and year of printing and publishing. If in any particular case, owing to a just reason, it appears desirable to suppress the name of the author, this may be permitted by the ordinary.

44. Printers and publishers should remember that new editions of an approved work require a new approbation; and that an approbation granted to the original text does not suffice for a translation into another language.

45. Books condemned by the Apostolic See are to be considered as prohibited all over the world, and into whatever language they may be translated.

46. Booksellers, especially Catholics, should neither sell, lend, nor keep books professedly treating of obscene subjects. They should not keep for sale other prohibited books, unless they have obtained leave through the ordinary from the Sacred Congregation of the Index; nor sell such books to any person whom they do not prudently judge to have the right to buy them.

*Penalties against Transgressors of the General Decrees*

47. All and every one knowingly reading, without authority of the Holy See, the books of apostates and heretics defending heresy; or books of any author which are by name prohibited by Apostolic Letters; also those keeping, printing, and in any way defending such works; incur *ipso facto* excommunication reserved in a special manner to the Roman Pontiff.

48. Those who, without the approbation of the ordinary, print, or cause to be printed, books of Holy Scripture, or notes or commentaries on the same, incur *ipso facto* excommunication, but not reserved to any one.

49. Those who transgress the other prescriptions of these general decrees shall, according to the gravity of their offense, be seriously warned by the bishop, and, if it seem expedient, may also be punished by canonical penalties.

We decree that these presents, and whatsoever they contain, shall at no time be questioned or impugned for any fault of subreption, or obreption, or of Our intention, or for any other defect whatsoever; but are and shall be ever valid and efficacious, and to be inviolably observed, both judicially and extra-judicially, by all of whatsoever rank and pre-eminence. And We declare to be invalid and of no avail, whatsoever may be attempted knowingly or unknowingly contrary to these, by any one, under any authority or pretext whatsoever; all to the contrary notwithstanding.

And We will that the same authority be attributed to copies of these Letters, even if printed, provided they be signed by the hand of a notary, and confirmed by the seal

of some one in ecclesiastical dignity, as to the indication of Our will by the exhibition of these presents:

No man, therefore, may infringe or temerariously venture to contravene this document of Our constitution, ordination, limitation, derogation, and will. If any one shall so presume, let him know that he shall incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul.

Given at St. Peter's in Rome, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-seven, on the twenty-fifth day of January, in the nineteenth year of Our Pontificate.

A. Card. Macchi.

A. Panici, Subdatary.

*Visa.*

De Curia: J. De Aquila Visconti.

L. ✠ S.

Registered in the Secretariate of Briefs.

I. Cugnoni.

# APPENDIX B

## BETROTHAL AND MARRIAGE

The Sacred Congregation of the Council, August, 2, 1907, issued the following decree concerning *sponsalia* (*Espousals, Betrothal, Engagement*), and Matrimony. Hitherto the Church has imposed no conditions with respect to the *external form* as necessary for the validity of *sponsalia.* Whether they were *solemn* or *private, public* or *clandestine, written* or *verbal,* the Church has always accepted them as valid and as having their *canonical* effects. These effects are two: 1st, the *impedient* impediment, making the marriage of either of the parties with a third person *unlawful,* as long as the *sponsalia* are not legitimately dissolved, but not *invalid;* 2d, the *diriment* impediment, called *publicæ honestatis,* absolutely invalidating the marriage of either of the betrothed with one of the blood relations of the other in the first degree.

According to the present decree all private and clandestine *sponsalia* are declared *canonically* invalid, *i.e.,* they will not have the *canonical* effects mentioned above. To be *canonically* valid they must be from Easter, April 19, 1908, contracted in writing, signed by both the betrothed, and by the parish priest, *or* the ordinary, *or* at least two witnesses. If either or both the parties to the *sponsalia* be unable to write, this fact is to be noted in the document, and another witness is required to sign

it, in addition to the parish priest, *or* the ordinary, *or* the two witnesses.

The Church does not prescribe that *sponsalia* should be contracted before marriage, for the latter is valid without the former taking place at all, but she desires that *private* and *clandestine* betrothals should be discouraged, and that *public* and *solemn* engagements should be encouraged. Private and clandestine espousals are not prohibited or declared unlawful, but they are *canonically* invalid, *i.e.*, they will not be recognized by the Church, and will not have any *canonical* effects.

This new decree unifies the law of the celebration of marriage throughout the world. It binds no one outside the Church, except *apostates* and the *excommunicated*, and it binds all within the Church; it is not *local*, but *personal*. Only those marriages are valid which are contracted before the parish priest or the ordinary of the place or a priest delegated by either of these. When it has been impossible for a whole month to have the presence of the competent priest or the ordinary of the place, the presence of the priest is not necessary for the validity. The competent priest for the celebration of marriage is every priest duly invested with the care of souls in a specified district, and in missionary lands every priest who is duly deputed by the superior of the mission for the general care of souls. The priest's presence must be *willing*, and is valid for the marriage not only of persons living in his district, but of those from other places also. In cases of imminent danger of death any priest may validly assist at the marriage. At all marriages the presence of two witnesses is required for their validity.

For the *licit* celebration of marriage among Catholics,

a residence for the space of a month of one of the contracting parties in the place of the celebration is necessary; for the *validity* of the marriage no residence at all is required.

A peculiarity in the new regulation is that the marriages must be entered not only in the matrimonial register, but also in the baptismal register.

The text of the important decree is as follows:

## DECREE CONCERNING SPONSALIA AND MATRIMONY

ISSUED BY THE SACRED CONGREGATION OF THE COUNCIL BY THE ORDER AND WITH THE AUTHORITY OF OUR HOLY FATHER POPE PIUS X

The Council of Trent (Cap. I, Sess. XXIV de Reform. Matrim.), made prudent provision against the rash celebration of clandestine marriages, which the Church of God for most just reasons has always detested and forbidden, by decreeing: "Those who otherwise than in the presence of the parish priest himself or of another priest acting with the license of the parish priest or of the ordinary, and in the presence of two or three witnesses, shall attempt to contract matrimony, the Holy Synod renders them altogether incapable of contracting marriage thus, and decrees that contracts of this kind are null and void."

But as the same Sacred Council prescribed that said decree should be published in all the parishes and was not to have force except in those places in which it had been promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and are still without it, and

continue to be subject to the doubts and inconveniences of the old discipline.

Nor has all difficulty been removed in those places where the new law has been in force. For often there has been grave doubt in deciding as to the person of the parish priest before whom a marriage is to be celebrated. The canonical discipline did indeed decide that he is to be regarded as the parish priest in whose parish one or other of the contracting parties has his or her domicil or quasi-domicil. But as it is sometimes difficult to judge whether a quasi-domicil really exists in a special case, not a few marriages were exposed to the danger of nullity; many, too, either owing to ignorance or fraud, have been found to be quite illegitimate and void.

These deplorable results have been seen to happen more frequently in our own time on account of the increased facility and celerity of intercommunication between the different countries, even those most widely separated. It has therefore seemed expedient to wise and learned men to introduce some change into the law regulating the form of the celebration of marriage, and a great many bishops in all parts of the world, but especially in the more populous States where the necessity appears more urgent, have petitioned the Holy See to this end.

It has been asked also by very many bishops in Europe, as well as by others in various regions, that provision should be made to prevent the inconveniences arising from *sponsalia;* that is, mutual promises of marriage, privately entered upon. For experience has sufficiently shown the many dangers of such *sponsalia:* first as being an incitement to sin and causing the deception of inexperienced girls, and afterward giving rise to inextricable dissensions and disputes.

Influenced by these circumstances, our Holy Father Pope Pius X desiring, in the solicitude he bears for all the churches, to introduce some modifications with the object of removing these drawbacks and dangers, committed to the Sacred Congregation of the Council the task of examining into the matter and of proposing to himself the measures it should deem opportune.

He was pleased also to have the opinion of the commission appointed for the codification of canon law, as well as of the eminent cardinals chosen on this special commission for the preparation of the new code, by whom, as well as by the Sacred Congregation of the Council, frequent meetings have been held for this purpose. The opinions of all having been taken, His Holiness ordered the Sacred Congregation of the Council to issue a decree containing the laws, approved by himself on sure knowledge and after mature deliberation, by which the discipline regarding *sponsalia* and marriage is to be regulated for the future and the celebration of them carried out in a sure and orderly manner.

In execution, therefore, of the apostolic mandate the Sacred Congregation of the Council by these letters lays down and decrees what follows.

### Concerning Sponsalia

I. Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish priest or the ordinary of the place, or at least by two witnesses.

In case one or both the parties be unable to write, this fact is to be noted in the document and another witness is to

be added who will sign the writing as above, with the parish priest or the ordinary of the place or the two witnesses.

II. Here and in the following articles by "parish priest" is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected the priest to whom the care of souls has been legitimately entrusted in any specified district and who is equivalent to a parish priest; and in missions where the territory has not yet been perfectly divided, every priest generally deputed by the superior of the mission for the care of souls in any station.

### Concerning Marriage

III. Only those marriages are valid which are contracted before the parish priest or the ordinary of the place or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII and VIII.

IV. The parish priest and the ordinary of the place validly assist at a marriage:

*a.* Only from the day they have taken possession of the benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from the office;

*b.* Only within the limits of their territory; within which they assist validly at marriages not only of their own subjects, but also of those not subject to them;

*c.* Provided when invited and asked, and not compelled by violence or by grave fear, they demand and receive the consent of the contracting parties.

V. They assist licitly:

*a.* When they have legitimately ascertained the free state of the contracting parties, having duly complied with the conditions laid down by the law;

*b.* When they have ascertained that one of the contracting parties has a domicil or at least has lived for a month in the place where the marriage takes place;

*c.* If this condition be lacking, the parish priest and the ordinary of the place, to assist licitly at a marriage, require the permission of the parish priest or the ordinary of one of the contracting parties, unless it be a case of grave necessity, which excuses from this permission;

*d.* Concerning persons without fixed abode (*vagos*), except in case of necessity it is not lawful for a parish priest to assist at their marriage, until they report the matter to the ordinary or to a priest delegated by him and obtain permission to assist;

*e.* In every case let it be held as the rule that the marriage is to be celebrated before the parish priest of the bride, unless some just cause excuses from this.

VI. The parish priest and the ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV and V, for the parish priest and the ordinary of the place.

VII. When the danger of death is imminent and where the parish priest or the ordinary of the place or a priest delegated by either of these can not be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be con-

tracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any district the parish priest or the ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.

IX. *a.* After the celebration of a marriage, the parish priest or he who takes his place is to write at once in the "Book of Marriages" the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the ordinary; and this even when another priest delegated either by the parish priest himself or by the ordinary has assisted at the marriage.

*b.* Moreover, the parish priest is to note also in the "Book of Baptisms," that the married person contracted marriage on such a day in his parish. If the married person has been baptized elsewhere, the parish priest who has assisted at marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the "Book of Baptisms."

*c.* Whenever a marriage is contracted in the manner described in VII and VIII, the priest in the former case, the witnesses in the latter, are bound conjointly with the contracting parties to provide that the marriage be inscribed as soon as possible in the prescribed books.

X. Parish priests who violate the rules thus far laid down are to be punished by their ordinaries according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules laid down in *b* and *c* of V, they are not to appropriate the stole-fees, but must remit them to the parish priest of the contracting parties.

XI. *a.* The above laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterward from the Church) whenever they contract *sponsalia* or marriage with one another.

*b.* The same laws are binding also on the same Catholics as above, if they contract *sponsalia* or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitatis cultus;* unless the Holy See decree otherwise for some particular place or region.

*c.* Non-Catholics, whether baptized or unbaptized, who contract among themselves, are nowhere bound to observe the Catholic form of *sponsalia* or marriage.

The present decree is to be held as legitimately published and promulgated by its transmission to the ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of Our Lord Jesus Christ, next year 1908.

Meanwhile let all the ordinaries of places see that this decree be made public as soon as possible, and explained in the different parochial churches of their dioceses in order that it may be known by all.

These presents are to have force by the special order of our Most Holy Father Pope Pius X, all things, even those worthy of special mention, to the contrary notwithstanding.

Given at Rome on the 2d day of August, in the year 1907.

VINCENT,

Card. Bishop of Palestrina, *Prefect.*

C. DE LAI, *Secretary.*

By a decree of the Sacred Congregation on the Discipline of the Sacraments, May 14, 1909, Pius X declared and decreed that any priest who, according to art. VII of the decree *Ne temere* in a case of imminent danger of death when the parish priest or the local Ordinary or a priest delegated by either of them cannot be had, can validly and lawfully assist at a marriage in the presence of two witnesses, in the same circumstances can also dispense in all impediments, even though they be public, which annul marriage by ecclesiastical law, except those of the priesthood and affinity in the direct line *ex copula licita.*

# APPENDIX C

## THE ROMAN CURIA

With wise design the Pontiff Sixtus V, of holy memory, following in the footsteps of his predecessors and perfecting what had been begun by them, decided to increase the number and define the limits of the sacred bodies of cardinals, or the Roman Congregations, some of which had been already instituted for the transaction of certain matters. He, therefore, by the Apostolic Letters beginning with the word *Immensa*, of Jan. 22, 1587, established fifteen of these Congregations, that, "dividing among them and the other offices of the Roman Curia the immense weight of the cares and affairs" habitually brought before the Holy See, it might be no longer necessary to treat of and deliberate upon so many things in Consistory, and at the same time that controversies might be more diligently gone into and a more speedy and easier solution be given to the business of those who apply to the Supreme Pontiff from all sides in the interests of religion and devotion, to seek justice, to ask favors, or for other reasons.

The utility accruing from these Sacred Congregations for the maintenance of ecclesiastical discipline, the administration of justice, and the relief of the Roman Pontiffs themselves overpowered by daily increasing cares and affairs, is shown by the history of the Church and is well known to all.

But in the course of time the organization of the Roman Curia, mainly effected by Sixtus V in the above-mentioned Letters Apostolic, lapsed from its original state. The number of the Roman Congregations was increased or diminished according to the necessities of time and circumstance, and even the jurisdiction originally attributed to the different Congregations underwent changes either by new enactments of the Roman Pontiffs or by the gradual growth of customs which became accepted. The result is that to-day the jurisdiction, or *competence,* of each of them is not quite clear to all nor is it well apportioned, that many of the Sacred Congregations have the right to define the law on the same matters, and that some of them have been reduced to the transaction of very little business while others are overcharged with work.

For these reasons many bishops and thoughtful men, especially the Roman cardinals, both in writing and orally, and both with Our Predecessor Leo XIII, of happy memory, and with Ourself, have frequently urged that suitable remedies should be provided for the inconveniences above mentioned. And We took pains to make partial provision in Our Letters *Romanis Pontificibus* of Dec. 7, 1903, by those *Quæ in Ecclesiæ bonum* of Jan. 28, 1904, and again by those *Sacræ Congregationi super negotiis* of May 26, 1906.

But now that there is also the question of the codification of the ecclesiastical laws, it has seemed highly fitting that a beginning should be made with the Roman Curia so that, once this has been organized suitably and in a manner clear to all, it may be in a position to perform more easily its work for the Roman Pontiff and the Church and to be of the greatest possible assistance.

Wherefore, after having taken counsel with several of the Roman cardinals, We have determined and We do decree that the Congregations, Tribunals, and Offices which compose the Roman Curia and to which the affairs of the universal Church are referred for treatment shall, after the autumn holidays of the current year, that is, after the third day of November 1908, be only those, besides the usual sacred consistories, which are defined in the present constitution, and which shall remain divided and constituted in number, order, and competence by the laws which here follow:

## The Sacred Congregations

### I

### *The Congregation of the Holy Office*

1. This Sacred Congregation, over which the Supreme Pontiff presides, guards the teaching of faith and morals.

2. To it alone, therefore, belongs the judgment of heresy and of other crimes which lead to a suspicion of heresy.

3. To it also is devolved all matters concerning indulgences, both as regards the doctrine and as concerns practice.

4. Everything appertaining to the precepts of the Church, such as the abstinences, fasts, and feasts to be observed, is now transferred from this Sacred Congregation and handed over to the Congregation of the Council; everything relating to the election of bishops belongs to the Consistorial Congregation; the relaxation of religious vows made in religious institutes belongs to the Congregation assigned for the affairs of religious societies.

5. Although a special Congregation is established *for the discipline of the sacraments*, nevertheless the Holy Office preserves intact its faculty to treat of those questions which concern what is known as the Pauline Privilege and the impediments *disparitatis cultus* and *mixtæ religionis*, as well as those connected with dogmatic teaching on matrimony, as also on the other sacraments.

## II

### *The Consistorial Congregation*

1. This Sacred Congregation comprises two distinct parts.

2. To the first appertains not only the charge of preparing what is to be done in the consistories but also, in places not subject to the Congregation de Propaganda Fide, of founding new dioceses, and *chapters* both *cathedral* and *collegiate;* of dividing dioceses already constituted; of electing bishops, apostolic administrators, and coadjutors and auxiliaries of bishops; of instituting the canonical investigations or *processus* concerning those to be elected and of diligently sifting the acts of these processes; of ascertaining the knowledge of those who are to be elected. But when the men to be elected, or the dioceses to be constituted or divided, are outside Italy, the officials of the office for public affairs, commonly called the *Secretariate of State*, shall themselves receive the documents and draw up the statement [*positionem*] to be submitted to the Consistorial Congregation.

3. The second part embraces all those matters which concern the government of the different dioceses, not subject to the Congregation de Propaganda Fide, and

which hitherto belonged to the Congregation of the Bishops and of the Council, and are now transferred to the Consistorial Congregation. To this latter, therefore, for the future belongs the vigilance over the fulfilment or non-fulfilment of the obligations by which ordinaries are bound, the cognizance of the written reports of bishops on the state of their dioceses, the ordering of apostolic visitations, the examination of what has been done in them, and after a faithful exposition made to Us each time, the ordering of what may seem necessary or opportune; finally, everything appertaining to the government, discipline, temporal administration, and studies of the seminaries.

4. It shall be the province of this Congregation, when conflicts of law arise, to solve doubts concerning the *competence* of the Sacred Congregations.

5. Of this Sacred Council the Supreme Pontiff is to be the prefect. And to it the Cardinal-Secretary of the Holy Office and the Cardinal-Secretary of State shall always be attached *ex officio*, besides the others whom the Supreme Pontiff may think well to make members of it.

6. The secretary shall always be a cardinal selected for this office by the Supreme Pontiff; with him there shall be a prelate with the title of *Assessor* who shall also fill the office of Secretary of the Sacred College of the Fathers-Cardinals, and under him a sufficient number of officials.

7. Consulters of this Congregation shall be the Assessor of the Holy Office, and the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs while in office; to these shall be added others elected by the Supreme Pontiff.

## III

*Congregation on the Discipline of the Sacraments*

1. To this Sacred Congregation is assigned the entire legislation concerning the discipline of the seven sacraments, without prejudice to the authority of the Congregation of the Holy Office according to the provisions above defined, and of the Congregation of Sacred Rites regarding the ceremonies to be observed in the performing, administration, and reception of the sacraments, which were hitherto decided or granted by other Congregations, Tribunals, or Offices of the Roman Curia.

2. So also to this Congregation are assigned all those matters connected with the discipline of matrimony, such as dispensations *in foro externo* for the poor as well as for the rich, *sanationes in radice,* dispensations *super rato,* the separation of married couples, the restitution of birthright or legitimation of offspring; as well as in the discipline of the other sacraments, such as dispensations for candidates for Orders, without prejudice to the right of the Congregation for the Affairs of Religious to regulate the ordinations of Religious; dispensations concerning the place, time, and conditions for the reception of the Eucharist, the offering of the Holy Sacrifice, the reservation of the Most August Sacrament, and the other matters of the same nature.

3. The same Congregation decides, without prejudice to the right of the Holy Office, questions regarding the discipline of the sacraments. But when this Congregation decides that any such questions are to be treated by judicial

process, then it shall hand them over to the tribunal of the Sacred Roman Rota.

4. For this Congregation, as well as for the others that follow, there shall be a cardinal-prefect who shall preside over the Sacred Order consisting of a number of fathers-cardinals to be elected by the Supreme Pontiff, with a *secretary* and the other necessary officials and consulters.

## IV

### *The Congregation of the Council*

1. To this Sacred Congregation is committed that branch of affairs which relates to the universal discipline of the secular clergy and of the Christian people.

2. It is, therefore, its province to provide for the observance of the precepts of the Church, such as fasts (except the Eucharistic fast which belongs to the Congregation on the Discipline of the Sacraments), abstinence, tithes, the observance of feasts, with the faculty of releasing the faithful from these laws on occasion; the government of everything relating to parish priests and canons and of all things affecting pious sodalities, pious unions, pious legacies, pious works, honorariums for masses, benefices or offices, ecclesiastical property, funds of money, diocesan tributes, and other affairs of the same kind. It sees also to everything relating to ecclesiastical immunity. To the same Congregation is reserved the faculty of dispensing from the conditions required for the obtaining of benefices when the conferring of these belongs to the ordinary.

3. To it also appertains all that regards the celebration and recognition of councils and gatherings or *conferences* of bishops, as the special Congregation till now in existence for the revision of councils is suppressed.

4. This Congregation, too, is the competent or legitimate tribunal in all causes relating to the affairs committed to it which it shall decide are to be treated in a disciplinary manner or *in linea disciplinari*, as the phrase goes; the others are to be handed over to the Sacred Roman Rota.

5. To the Congregation of the Council is added and united as a special Congregation that known as the *Lauretan*.

## V

### *The Congregation for the Affairs of Religious*

1. This Sacred Congregation decides only those matters throughout the world which relate to the affairs of Religious of both sexes, whether bound by simple or solemn vows, and of those who, although without vows, lead a life in common after the manner of Religious, and also of secular third orders, and whether the matters to be treated are between Religious themselves or relate to them and others.

2. It, therefore, assumes the regulation of all matters arising either between bishops and Religious of both sexes or between Religious themselves. It is also the competent tribunal in all causes which are treated in a disciplinary manner, or *in linea disciplinari*, when a Religious is either defendant or complainant; other causes are to be handed over to the Sacred Roman Rota, without prejudice, however, to the right of the Holy Office in the causes appertaining to that Sacred Congregation.

3. Finally, to this Sacred Congregation is reserved the concession of dispensations from the common law for Religious.

## VI

### *The Congregation de Propaganda Fide*

1. The jurisdiction of this Sacred Congregation is limited to those regions in which the sacred hierarchy not being yet constituted the missionary state still exists. But as there are some regions which, although they possess a hierarchy, are still somewhat inchoate, it is Our will that these be subject to the Congregation de Propaganda Fide.

2. Wherefore from the jurisdiction of the Congregation de Propaganda Fide We decree the transference under the common law: in *Europe*, of the ecclesiastical provinces of England, Scotland, Ireland, and Holland, and of the diocese of Luxembourg; in *America*, of the ecclesiastical provinces of the Dominion of Canada, Newfoundland, and the United States. Hence, affairs relating to these places shall for the future not be treated by the Congregation de Propaganda Fide, but by the other Congregations according to the nature of the business.

3. The other ecclesiastical provinces and dioceses hitherto subject to the jurisdiction of the Congregation de Propaganda Fide, are to remain under its right and authority. So too, We decree that to it shall belong all vicariates apostolic, prefectures, and missions whatsoever, including those which are at present in a special manner under the Congregation for Extraordinary Ecclesiastical Affairs.

4. Still, in order to provide for unity of government, it is Our will that the Congregation de Propaganda Fide hand over to the other special Congregations everything concerning the Faith, or Matrimony, or the discipline of the sacred rites.

5. As regards Religious, the same Congregation takes upon itself everything affecting Religious, whether singly or in bodies, considered as missionaries. But all things affecting Religious as Religious, both individually and as bodies, it shall remit or leave to the Congregation for the Affairs of Religious.

6. To it is united the Congregation for the Affairs of Oriental Rites which are to continue entirely as before.

7. The special prefecture for administration ceases to exist, and the administration of all the property including that of the *Reverenda Camera Spoliorum* is committed to the Congregation de Propaganda Fide itself.

8. With this Sacred Congregation is joined the Commission for the *Union of the Dissident Churches.*

## VII

### *The Congregation of the Index*

1. For the future it shall be the province of this Sacred Congregation not only to examine diligently the books delated to it, to prohibit them if this should seem well, and to concede dispensations; but also officially to investigate in the best way available whether writings of any kind that should be condemned are being circulated; and to remind the ordinaries how solemnly they are bound to condemn pernicious writings and to denounce them to the Holy See in conformity with the constitution *Officiorum* of January 25, 1897.

2. As the prohibition of books has very frequently the scope of defence of the Catholic faith, which is also the object of the Congregation of the Holy Office, We decree that in future in all things, and in those alone, relating to

the prohibition of books, the fathers-cardinals, the consulters, and the officers of both Congregations, may communicate with one another and that all of them in this matter shall be bound by the same secret.

## VIII

### *The Congregation of the Sacred Rites*

1. This Sacred Congregation has the right of examining and decreeing all things which relate proximately to the sacred rites and ceremonies of the Latin Church, but not those which in a broader sense are related to the sacred rites, such as the laws of precedence and other matters of that kind which are to be treated either according to judicial process, or in a disciplinary manner or *in linea disciplinari*.

2. It is, therefore, especially its province to watch over the diligent observance of the sacred ritual and ceremonial in the celebration of Mass, in the administration of the sacraments, in the performance of the divine offices, in short over all that regards the worship of the Latin Church; to grant opportune dispensations; to bestow insignia and privileges of honor, both personal and temporary, as well as local and perpetual, relating to the sacred rites and ceremonies, and to prevent the introduction of abuses in these matters.

3. Finally, it has to deal with everything relating in any way to the beatification and canonization of the saints or to the sacred relics.

4. To this Congregation are joined the Liturgical Commission, the Historico-Liturgical Commission, and the Commission for Sacred Music.

## IX

### *The Ceremonial Congregation*

This Sacred Congregation retains all the rights hitherto attributed to it; hence to it appertain the regulation of the ceremonies to be observed in the pontifical chapel and court, and of the sacred functions which the fathers-cardinals perform outside the pontifical chapel; it also takes cognizance of the question affecting the precedence both of the fathers-cardinals and of the legates whom many nations send to the Holy See.

## X

### *The Congregation for Extraordinary Ecclesiastical Affairs*

This Sacred Congregation concerns itself only with those matters which are submitted to its examination by the Supreme Pontiff through the Cardinal-Secretary of State, and especially with such of them as have some connection with civil laws and relate to the pacts entered upon with different States.

## XI

### *The Congregation of Studies*

To this Sacred Congregation is committed the regulation of the studies which are to be gone through in the major athenæums known as universities or faculties, which depend on the authority of the Church, including those which are administered by the members of religious societies. It examines and approves new institutions; it grants the faculty for the conferring of academic degrees, and may confer them itself in the case of men distinguished for special learning.

## Tribunals

### I

### *The Sacred Penitentiaria*

The jurisdiction of this sacred court or tribunal is limited entirely to those things which regard the *forum internum*, non-sacramental as well as sacramental. Hence, matrimonial dispensations of the *forum externum* being assigned to the Congregation for the Discipline of the Sacraments, this tribunal for the *forum internum* concedes favors, absolutions, dispensations, commutations, sanations, condonations; moreover, it examines questions of conscience and decides them.

### II

### *The Sacred Roman Rota*

As the Tribunal of the Sacred Roman Rota, which in former times was an object of universal praise, has in these times through various causes almost ceased to judge, the result has been that the Sacred Congregations have been burdened excessively with forensic cases. To meet this evil, following the lines laid down by Our Predecessors Sixtus V, Innocent XII, and Pius VI, We not only ordain "that for the future contentious cases, civil as well as criminal, requiring judicial procedure with trial and proofs, shall not be received or taken cognizance of by the Sacred Congregations" (Letter of the Secretariate of State, April 17, 1728); but We moreover decree that all contentious cases, not major ones, which are treated in the Roman Curia, shall for the future devolve to the Tribunal of the Sacred

Roman Rota, which We do by these Letters again call into exercise according to the *Special Law* which We place in the appendix of the present constitution, without prejudice, however, to the rights of the Sacred Congregations as above set forth.

### III

### *The Apostolic Segnatura*

We have also deemed it well to restore the supreme Tribunal of the Apostolic Segnatura and by these present letters We do restore it, or rather We institute it in the manner determined in the above-mentioned Law, suppressing the ancient organization of the Papal Segnatura of Grace and Justice.

## Offices

### I

### *The Apostolic Cancelleria*

1. This office has for president one of the cardinals of Holy Roman Church, who for the future shall assume the title of chancellor instead of vice-chancellor. According to very ancient custom he fulfils *ex officio* the office of notary in the Sacred Consistories.

2. Henceforth the sole proper function reserved to the office of the Cancelleria shall be that of forwarding *sub plumbo* the apostolic letters concerning the provision of consistorial benefices, the institution of new dioceses and chapters, and the transaction of the other greater affairs of the Church.

3. There shall be only one manner of forwarding these, that is *per viam Cancellariæ*, according to rules to be given

separately, the former methods known as *per viam secretam, de Camera,* and *de Curia* being suppressed.

4. The above-mentioned letters or *bulls* shall be sent by command of the Consistorial Congregation concerning the affairs belonging to its jurisdiction, or by command of the Supreme Pontiff concerning other affairs, the terms of the mandate being in each case observed to the letter.

5. With the suppression of the College of Prelates known as *Abbreviatores majoris vel minoris residentiæ,* or *de parco majori vel minori,* their office in the signing of Apostolic Bulls is transferred to the college of Prothonotaries-Apostolic called *participantes de numero.*

## II

### *The Apostolic Dataria*

1. This office is under the presidency of one of the cardinals of Holy Roman Church, who shall for the future have the title of Datary and not that of Pro-Datary.

2. For the future the one special function of the Dataria is to be that of taking cognizance of the fitness of those who aspire to non-consistorial benefices reserved to the Apostolic See; to draw up and forward the Apostolic Letters conferring these benefices; to dispense from the requisite conditions for the conferring of these benefices; to look after the pensions and charges which the Supreme Pontiff shall have imposed for the conferring of them.

3. In the performance of all this it shall observe the rules special to it which are to be given separately.

## III

### *The Apostolic Camera*

To this office belong the care and the administration of the property and temporal rights of the Holy See, especially during the periods of vacancy. It is presided over by a cardinal-chamberlain of Holy Roman Church, who in the fulfilment of his office during the vacancy of the See shall be governed by the rules contained in the constitution *Vacante Sede Apostolica* of December 25, 1904.

## IV

### *The Secretariate of State*

This office of which the supreme ruler is the Cardinal-Secretary of State, that is, of public affairs, will consist of three parts. The first part will be concerned with extraordinary affairs, which shall be submitted for examination to the Congregation assigned for them, the others being handed over, according to their nature, to the special Congregations to which they belong; the second shall deal with ordinary affairs, and to it, among other things, shall belong the right of granting all marks of honor, both ecclesiastical and civil, with the exception of those reserved to the prelate who presides over the pontifical household; the third shall occupy itself with the sending of the Apostolic briefs committed to it by the various Congregations. Over the first part shall preside the *secretary* of the Congregation for Extraordinary Ecclesiastical Affairs; over the second the *substitute* for ordinary affairs; over the third the *chancellor* of the Apostolic briefs. Among the presi-

dents of these parts the first is the secretary of the Sacred Congregation for Extraordinary Affairs, the second the *substitute* for ordinary affairs.

## V

*The Secretariates of Briefs to Princes and of Latin Letters*

This double office shall perform as heretofore its functions of writing in Latin the acts of the Supreme Pontiff.

But for the future in all Apostolic Letters sent either by the *Cancelleria* or by the *Dataria* the beginning of the year shall be taken not from the day of the Incarnation of Our Lord, that is, from March 25, but from the first of January.

Wherefore the Congregations, Tribunals, and Offices which We have mentioned shall constitute the Roman Curia, preserving their own constitutions as in existence before these Our letters, unless in as far as they may have been changed by the above prescriptions or according to the law and to the rules, general or special, added to this constitution.

The Congregation known as that of the *Reverenda Fabrica S. Petri* shall for the future have as its sole care the domestic affairs of the Basilica of the Prince of the Apostles, in this observing to the letter the rules laid down by Benedict XIV in the constitution *Quanta curarum* of November 15, 1751.

The Commissions for *the promotion of the study of scripture* and *of history;* for *the administration of Peter Pence,* for *the preservation of the Faith in the city,* remain in their former state.

With the removal of the Congregation for *the apostolic visitation of the city,* its right and functions We transfer to a special commission of fathers-cardinals to be constituted at the vicariate of the city.

But for all and several of the above-mentioned Congregations, Tribunals, and Offices let this first of all be a solemn rule: that nothing grave and out of the ordinary be done until it shall have previously been made known to Us and to Our Successors for the time being by the rulers of the same.

Moreover all sentences whether of grace or justice require the pontifical approval, exception being made for those for which special faculties have been granted to the rulers of the said Offices, Tribunals, and Congregations, and always excepting the sentences of the tribunal of the Sacred Rota and of the Apostolic Segnatura passed by them within their competence.

To this constitution are added special laws, and rules both general and special, by which the discipline and the method of treating affairs in the Congregations, Tribunals, and Offices are regulated; which laws and rules We order to be scrupulously observed by all.

And these are to have force while the Apostolic See is occupied; for when it is vacant, the laws and rules laid down in the above-mentioned constitution *Vacante Sede Apostolica* are to hold.

Decreeing the present letters to be of force, valid, and efficacious, now and in the future, and to have and obtain their plenary and integral effects, and to be in all things and for all things of force on behalf of those whom it concerns or shall in any way concern for the time being, and that any attempt against these made by anybody shall be

null and void. Notwithstanding Our rule and that of the Apostolic Cancelleria regarding the non-abolition of acquired rights, and the Apostolic Constitution and Ordinances, or statutes based on any other sanction, customs, and anything else whatsoever, even those calling for special mention, to the contrary.

Given at Rome at St. Peter's in the year of the Incarnation of Our Lord one thousand nine hundred and eight, on the feast of the Holy Apostles Peter and Paul, June 29, in the fifth year of Our pontificate.

A. Card. Di Pietro,
*Pro-Datary.*

R. Card. Merry del Val,
*Secretary of State.*

Authenticated

I of the Viscounts De Aquila of the Curia.
Loco ✠ Plumbi.

Reg. in the Secr. of Briefs.

V. Cugnoni.

# APPENDIX D

## DECREE TO BISHOP OF LIVERPOOL

By the courtesy of the Right Reverend Bishop of Liverpool we have been favored with the following decree:

Beatissime Pater, Episcopus Liverpolitanus ad pedes Sanctitatis Tuæ provolutus, dubiorum sequentium de modo neo-conversos ab hæresi reconciliandi solutionem humiliter petit:

1. Utrum tam abiuratio hæresis quam neo-conversorum baptismus conditionatus, qui apud nos, iuxta Decretum XVI. primæ synodi provincialis Westmonasteriensis non fiat publice sed omnino privatim cum aqua lustrali et absque cæremoniis, coram Notario vel sacerdote ab Episcopo delegato nec non duobus saltem testibus semper fieri debeant?

2. Utrum forma absolutionis ab hæresi a sacerdote quem Episcopus delegaverit adhibenda incipere debeat a verbis "auctoritate Aplica, qua fungor in hac parte absolvo te," etc., an potius "auctoritate episcopali, mihi in hac parte commissa," etc.? Videtur enim potestas absolvendi in casibus hæresis ad forum externum Episcopi deductis apud nos ex potestate Episcopi ordinaria generatim procedere.

3. Utrum puellæ, quæ maiores sint duodecim annorum, minores vero quatuordecim, hæresis abiurationem facere et absolutionem a censuris recipere debeant? Regula enim Albitii (Collectanea S. C. P. F., 1680) tantum de pueris loqui

videtur "si debba esigere dai giovani avanti l'età di 14 anni la sola professione della fede cattolica." Lex vero communis puellas maiores duodecim annorum censuris ligari affirmat.

4. Utrum cærimoniæ baptismi solemnis adhibendæ sint in baptismo sub conditione iterando puerorum vel puellarum minorum septem annorum, (*a*) quorum baptismus in hæresi susceptus dubius iudicandus fuerit? (*b*) quorum de baptismo in ecclesia catholica forsan collato grave adsit dubium?

5. Utrum professio fidei iuxta regulam Albitii a minoribus quatuordecim annorum exigenda sit: (*a*) Professio fidei die 20 Julii 1859 Episcopo Philadelphi data, quæ incipit a verbis "Io NN. avendo avanti," etc.? (*b*) An symbolum Apostolorum? (*c*) An forsan professio fidei, quæ ex interrogationibus et responsis in ordine baptismi parvulorum constat, nempe "Credis in Deum Patrem, etc. — Credis in Jesum Christum, etc. — Credis in Spiritum Sanctum, etc. — Credo."?

6. Utrum neo-conversus dum fidei professionem pronuntiat codicem Evangelii ambabus manibus tangere debeat? Bis enim dicit "Evangeli che tocco colle proprie mani" Quare, etc., etc.

Liverpolii, die 29 Martii, 1906.

### Feria iv, die 3 Junii, 1908

In Congne Generali S. R. U. Inquisitionis propositis suprascriptis dubiis R. P. D. Episcopi Liverpolitani, præhabitis RR. DD. Consultorum votis, Emi ac Rmi Dni in rebus fidei ac morum Inquisitores Generales, respondendum mandarunt:

Ad 1$^{um}$. Affirmative. Attamen quando huius normæ applicatio in particulari aliquo casu iudicio R. P. D. Episcopi, absque vero incommodo fieri nequit, tum eius arbitrio et prudentiæ a communi lege et praxi recedere relinquitur, sed semper ita ut abiuratio in exteriori foro compareat et probari valeat.

Ad 2$^{um}$. Affirmative ad primam partem, negative ad secundam.

Ad 3$^{um}$. Affirmative.

Ad 4$^{um}$. In utroque casu, si dubium sit rationabile, baptismus administretur secreto et cum cæremoniis in Rituali Romano præscriptis.

Ad 5$^{um}$. Uti possunt formula breviori iam a S. Officio adprobata in Philadelphiensi 20 Julii, 1890, uti in Collectanea S. C. de Prop. Fide, n. 1689.

Ad 6$^{um}$. Sufficit ut neo-conversus dum fidei professionem pronuntiat, codicem Evangelî una tantum manu tangat.

In sequenti vero feria V, d. 4 eiusdem mensis et anni SSmus D. N. Pius Div: Prov: Papa X., in audientia R. P. D. Adsessori S. Officii impertita, habita de supradictis relatione, resolutiones Emorum Patrum confirmavit.

Caesar Rossi, S. R. et U. I. Substus Notarius.

# APPENDIX E

## FIRST CONFESSION AND COMMUNION

A DECREE of the Sacred Congregation of the Sacraments, August 8, 1910, declared that the obligations of confession and communion begin to bind at the same time, and that this time is when a child begins to reason; that is, about the age of seven. In order that a child may be ready for his first communion a full and perfect knowledge of Christian doctrine is not necessary; it is only requisite that he knows in a measure, according to his capacity, the mysteries of the Faith that are necessary, *necessitate medii*, and that he knows the difference between the Eucharist and common bread. The obligation of the precept of confession and communion, which binds a child, falls especially on those who ought to have charge of him; that is, on the parents, confessor, teachers, and parish priest. It belongs to the father, or to him who holds the father's place, and to the confessor to admit a child to his first communion.

# A SHORT HISTORY OF MORAL THEOLOGY

Ethics has a special place in the Christian religion. Lactantius, writing under the Emperor Constantine, points out this fundamental difference between paganism and the true religion. Pagan religion, he says, is concerned only with external rites and ceremonies performed in honor of the gods; it gives no precepts of righteousness and virtue; it does not form and cultivate men's characters.[1] On the other hand, ethics forms an essential part of the Christian religion. Christ was called Jesus because He came among us to save us from our sins. This He did not only by atoning for them, but by His example, His teaching, and His grace He showed us how to lead good lives and enabled us to do it. He came to do and to teach, so that not only His words but His actions, too, were lessons to us in conduct. He proposed Himself to us as the Way by which we should walk; He bade us follow His example; He taught us to learn of Him meekness, humility, and all virtues. In Him God, our Creator and Lord, was revealed to us; He is our first beginning and last end. To Him we must refer and order our whole lives and our every action. We are His stewards, and when life comes to an end each of us will be called upon to render a strict account to Him, as our judge, of every thought, word, and action of

[1] De Divinis Instit., iv, c. 3.

our lives. Heaven will be the reward of the faithful servant, eternal suffering in hell will be the just punishment of the wicked.

Before finally quitting the earth Our Lord founded His Church, a hierarchical society of men, to continue the work which He had begun for the sanctification and salvation of the whole human race. His last solemn commission to His apostles was a command to teach men to observe all that He had commanded; certain truths had been revealed to them concerning God, as well as moral rules for their guidance, but even the truths concerning God were not merely speculative; they, too, were revealed for the sanctification and salvation of men. A duty of submission of the intellect, under pain of eternal damnation, was laid on all who heard the Gospel preached. The basis of Christian morality thus rests firmly established on the word of God, requiring unwavering faith, not on the uncertain and shifting sands of human opinion. That Gospel contained not only moral precepts which are obligatory on all, but counsels also of great perfection which those who had the moral strength were encouraged to adopt as rules for the conduct of their lives. The perfect holiness of God Himself was held up as the model which they were to imitate and the lofty ideal at which they were ever to aim.

This revelation of Christ was committed to the Church as a sacred deposit to be faithfully kept, guarded from all admixture of error, and diligently preached to men for their instruction, guidance, sanctification, and salvation. The Catholic Church has always understood that this was the object of her foundation by Jesus Christ. That was her mission, to preach the Gospel, to keep the deposit of faith, to teach what Christ had revealed, and not to allow

it to be changed or corrupted even by an angel from heaven. It is the boast of the Catholic Church that by the assistance which Christ promised her, through the constant guidance of the indwelling Spirit of Truth which He sent down upon her, she has faithfully accomplished her task. In spite of enemies within and without, in defiance of the hostile powers of hell and of the unbelieving world, she has persisted through the ages in preaching in season and out of season the divine revelation which was committed to her faithful keeping. At first sight it might seem that no history of such a system of doctrine is possible. History is the scientific narration of the varying fortunes and changes which befall the subject of it. What history can there be of a system of doctrine which has always been the same?

The Christian revelation as taught by the Catholic Church does indeed always remain the same in itself, objectively, as it was completed when the last of the apostles died. This revelation, and nothing else, the Church was commissioned to keep and to preach to the end of time for the salvation of men. It is the Church's greatest boast, as it is her highest claim to our gratitude, that she has ever preserved unsullied through the ages the divine teaching of Jesus of Nazareth. No man ever taught like Him. The moral doctrine which He inculcated by word and by deed is the loftiest ideal of conduct which has ever been manifested to the world. It cannot be improved upon, and it is impious to attempt to change it. The Catholic denies that it has been changed in the Catholic Church. Non-Catholic historians of Christian morals profess to discover instances of change, but this is due to their own philosophical or religious presuppositions. Thus when the Lutheran Dr. Luthardt discovers in the "Didaché,"

written as he acknowledges at the end of the first century, "the beginnings of a false view of works," [1] we reply that the same view of works appears in the documents that make up the New Testament, and that it is not false. Lecky discovered a change of view as to the lawfulness of taking human life when Christianity became the official religion of the Roman Empire.[2] In proof of this he quotes Lactantius and one or two other Fathers who held that it is never lawful to take human life. It would not be difficult to quote instances of Christian writers up to our own days who have held the same doctrine, and one might deduce therefrom an argument to show either that Christian morality had progressed, or deteriorated, or had remained stagnant for nineteen centuries, according to the exigencies of one's philosophical system. Harnack discovers the sources of Catholic monachism in the writings of St. Methodius.[3] The Catholic sees them writ large in the Gospel of St. Matthew.

These instances will show why the Catholic cannot accept the accounts of growth, change, and decay which are given in many so-called histories of Christian morals. Nevertheless, he allows that there is a progress and development which admits of being traced historically. The Catholic Church has always been explicit on this point. After teaching that the revealed doctrines of the Faith were not proposed by God to man's intellect to be improved upon like some philosophical system, but were committed to the Church as a divine deposit to be faithfully kept and infallibly explained, the Council of the

[1] History of Christian Ethics, p. 117.
[2] History of European Morals, ii, p. 42.
[3] History of Dogma, iii, p. 110.

Vatican could find no better terms in which to describe true development of that doctrine than those which had been used by St. Vincent of Lerins in the fifth century.

"Therefore," it says, "let the understanding, knowledge, and wisdom of each and of all, of individuals as well as of the whole Church, increase and make much and great progress through the ages and the centuries; but only in its own line, that is, in the same truth, in the same sense, and in the same thought." [1] Change in Christian dogma and moral we refuse to accept or to acknowledge; we readily admit that there has been and ought to be development. The precepts of Christian morality have not always been equally well understood; what was obscure and uncertain has been made more clear and certain. The existence of different conditions, circumstances, and wants, in different ages and countries, necessitated some change in the adjustment of the teaching to the varying surroundings. New duties arose from new positive legislation. Besides, the science of Christian morals is not a mere exposition of the moral precepts of the Gospel and of the positive legislation of the Church. Books have been written containing such an exposition in the very words of Scripture, like the "Speculum" of St. Augustine, and the "Scintillæ" attributed to Venerable Bede,[2] but such as these are not works of moral theology. The science of moral theology arranges its subject-matter in an orderly and logical way; it shows the grounds and the reasons of the doctrine, it harmonizes part with part so as to form a compact and systematic body of doctrine. All this is the work of time and of many minds, and it admits of his-

[1] Vatican, sess. iii, c. 4.

[2] Migne, P. L. 88, 598.

torical treatment. In the brief space at our disposal we propose to trace at any rate the chief stages in the development of Catholic moral theology. Our history may conveniently be divided into three periods; the first will embrace the age of the Fathers, the second that of the scholastics, the third will be the modern period.

## Section I

### *The Patristic Period*

The end for which Jesus Christ established His Church was the sanctification and salvation of souls. This end the Church was to obtain chiefly by preaching the Gospel which her Founder had revealed and by administering the sacraments which He had instituted.[1] Men were to be sanctified and prepared for eternity by holy living through the grace of God communicated to them principally by means of the sacraments. The Gospels contain a short summary of the general teaching of Jesus Christ; this is developed somewhat in certain directions in the other writings of the New Testament, but the preachers of the Word soon found it convenient to have by them brief summaries of the moral teaching of Our Lord by itself. This need was met by such works as the "Didaché," or "Teaching of the Twelve Apostles," composed about the end of the first century, and the "Pastor" of Hermas, written a little later. It would be utterly impossible to give even an outline of the ethical works of all the Fathers of the Church. Together they form a very voluminous and complete course of moral theology, and more than one such

[1] Matt. xxviii. 19, 20.

course has been put together by simply printing a consecutive selection of their works. Thus in 1791 an Italian priest, Angelo Cigheri, published at Florence his "Veterum Patrum Theologia Universa," in thirteen volumes quarto, of which the three last are devoted to morals. A fairly complete catalogue of ethical works by the Fathers will be found in the indices of Migne's "Patrology," arranged under the separate headings which figure in our modern manuals of moral theology. All that we can do here is to select a few typical works which exhibit the gradual development of the science of Christian Ethics. The "Didaché" may be looked upon as the first handbook of morals which has come down to us, and it will be worth while to give a short analysis of its contents.

This first handbook of moral theology begins with the first general principle of ethics. All righteousness is summed up in the general precept to avoid evil and do good. The doing of good consists of the observance of the two great commandments of love for our God and for our neighbor. The golden rule is added to the statement of the general first principles of morality. "There are two ways," we read, "one of life and one of death: and there is much difference between the two ways. Now the way of life is this: First thou shalt love God that made thee; secondly, thy neighbor as thyself; and all things whatsoever thou wouldest should not happen to thee, neither do thou to another." The rest of the first chapter is occupied with a development of the precept of love for our neighbor, expressed for the most part in the language of the Sermon on the Mount. The second chapter enumerates some of the principal negative duties toward our neighbor. A similar enumeration occupies the third

chapter, but here there is an attempt to give the reason for the different prohibitions, as, for example: "Be not prone to anger, for anger leads to murder; neither a zealot, nor contentious, nor passionate; for from all these things murders are begotten." In the fourth chapter are set down the duties toward preachers of the Gospel, of making peace, of judging righteously, of almsgiving; duties toward parents, children, servants; of avoiding hypocrisy, and not adding to or taking away from the precepts of the Lord which they had been taught. The chapter concludes with, "This is the way of life."

The fifth chapter consists of a long enumeration of sins, and ends with the prayer, "May ye be delivered, children, from all these."

In the sixth chapter there is a warning against being led away from this teaching by any one, for such a one would not teach according to God. A distinction is drawn between what is required for perfection and what is morally possible. The faithful are bidden specially to beware of what has been sacrificed to idols.

A brief instruction on Baptism occupies the seventh chapter, and in the eighth Christians are taught to fast on Wednesdays and Fridays, so that their fasting-days may be different from those of the Jews, who fasted on Mondays and Thursdays. They are told to say the "Our Father" three times a day. The ninth and tenth chapters give instructions on the celebration of the Eucharist, while the two following deal with the way in which prophets and strangers should be received. The thirteenth chapter prescribes the offering of first-fruits. In the next chapter the faithful are instructed to meet together on every Lord's Day, to offer the Eucharistic Sacrifice, after confessing

their sins, so that their sacrifice may be pure. Enemies, too, should be reconciled lest the sacrifice be defiled. It was of this sacrifice that Malachias prophesied. The fifteenth chapter deals with the election of bishops and deacons and the respect which is due to them. The duties of fraternal correction, of prayer and almsdeeds, are enjoined as they are contained in the Gospel of Our Lord. The last chapter contains an exhortation to watch, and inculcates the necessity of faith and perseverance, for Antichrist will appear and seduce many. The treatise concludes with a short description of the signs of the last day.

The whole of the second Book of the "Pastor" of Hermas is a document of early Christian moral teaching very similar to the "Didaché," but more attempt may be observed in it to show the connection between one prohibition and another, and to give reasons and motives for their observance.

A great advance is observable in the catechetical works of Clement of Alexandria. They are almost exclusively devoted to moral teaching, which their learned author illustrates and confirms by constant quotations from the Greek classical authors. With an enthusiastic and personal love for Jesus Christ, and faith in His teaching as a divine and full revelation of the truth to men, he combines a high esteem for reason and philosophy. According to Clement, philosophy was the pedagogue of the pagan world, preparing it for Christ and leading it to Him, as the law did the Jews. Philosophy is the handmaid of theology, he says, and the dictates of reason are but the promptings of the Word which illuminates every man that cometh into the world. This, of course, is but a development of ideas which we find in the Scriptures of the Old and New

Testament, and it is a natural consequence of Christian teaching concerning God and His relation to man and to the world. It is a very superficial view which regards the action of Clement and other Fathers in the use they made of reason and philosophy as a corrupting influence in Christian teaching. With them, as with the scholastics in the Middle Ages, that action was the necessary result of a firm faith in the Gospel message, and the natural desire to understand it and penetrate its full meaning as far as possible. It was *Fides quærens intellectum*, the moving spirit of Catholic theology from the beginning. Better than any lengthy exposition, an extract or two from Clement will show how far the science of moral theology had progressed at the end of the second century. The following extract is taken from an apologetic work entitled "An Exhortation to the Heathen."

"Wherefore, since the Word Himself has come to us from heaven, we need not, I reckon, go any more in search of human learning to Athens and the rest of Greece, and to Ionia. For if we have as our teacher Him that filled the universe with His holy energies in creation, salvation, beneficence, legislation, prophecy, teaching, we have the Teacher from whom all instruction comes; and the whole world, with Athens and Greece, has already become the domain of the Word. For you, who believed the poetical fable which designated Minos the Cretan as the bosom friend of Zeus, will not refuse to believe that we who have become the disciples of God have received the only true wisdom; and that which the chiefs of philosophy only guessed at, the disciples of Christ have both apprehended and proclaimed." [1]

[1] Exhortation to the Heathen, c. 11.

The next extract from the "Pædagogus," a work containing instructions for recent converts, shows the place which reason or conscience holds in Christian ethics.

"Everything that is contrary to right reason is sin. Accordingly, therefore, the philosophers think fit to define the most generic passions thus: lust, as desire disobedient to reason; fear, as weakness disobedient to reason; pleasure, as an elation of the spirit disobedient to reason. If, then, disobedience in reference to reason is the generating cause of sin, how shall we escape the conclusion that obedience to reason, — the Word, — which we call Faith, will of necessity be the efficacious cause of duty? For virtue itself is a state of the soul rendered harmonious by reason in respect to the whole life. Nay, to crown all, philosophy itself is pronounced to be the cultivation of right reason; so that, necessarily, whatever is done through error of reason is transgression, and is rightly called sin." [1]

The "Stromata," or "Miscellanies," are a collection of materials for the ethical instruction and training of the Christian theologian. The philosophical and theological detail to which Clement descends in the treatment of his subject may be illustrated by an extract from the fourteenth chapter of the second Book of the "Stromata," on the different ways in which an act may be involuntary. The matter of course belongs to the treatise on Human Acts, sometimes said to be the last treatise which was added to our manuals of morals.

"What is involuntary is not matter for judgment. But this is twofold — what is done in ignorance, and what is done through necessity. For how will you judge concerning those who are said to sin in involuntary modes? For either

[1] Pædagogus, i, c. 13.

one knew not himself, as Cleomenes and Athamas, who were mad; or the thing which he does, as Æschylus, who divulged the mysteries on the stage, who being tried in the Areopagus was absolved on his showing that he had never been initiated. Or one knows not what is done, as he who has let off his antagonist, and slain his domestic instead of his enemy; or that by which it is done, as he who in exercising with spears having buttons on them, has killed some one in consequence of the spear throwing off the button; or knows not the manner how, as he who has killed his antagonist in the stadium, for it was not for his death but for victory that he contended; or knows not the reason why it is done, as the physician who gave a salutary antidote and killed, for it was not for this purpose that he gave it, but to save." [1]

As yet no attempt had been made in the Church to write a systematic treatise of morals by reducing the various virtues and vices to logical order under appropriate general principles. This step was taken by St. Ambrose at the end of the fourth century. This great Father and Doctor of the Church composed his work "De Officiis" for the instruction of the clergy of his church of Milan. He expressly tells us that he followed Cicero's work with the same title as his pattern. Cicero wrote his book for the instruction of his son; St. Ambrose desired to write for the instruction of his spiritual children. Although he followed Cicero closely in the arrangement and treatment of the matter, yet he never loses sight of what appears to have been the chief motive that he had in view in the composition of his work; namely, to demonstrate the superiority of Christian over pagan ethics.

[1] Stromata, ii, c. 14.

The work is divided, like Cicero's, into three Books. In the first he treats of what is honorable and dishonorable. He points out that the philosophic distinction between ordinary and perfect virtue has its counterpart in the Gospel, which distinguishes between what is matter of strict precept and of counsel. Certain elementary duties, as those toward parents and elders, are touched on, and then follows a discussion on the four cardinal virtues. The second Book treats of what is expedient with reference to eternal life. The third Book treats of what is honorable and expedient in conjunction, and the author has no difficulty in reconciling these conflicting principles according to Christian teaching. "For," he writes, "I said that nothing can be virtuous but what is useful, and nothing can be useful but what is virtuous. For we do not follow the wisdom of the flesh, whereby the usefulness that consists in an abundance of money is held to be of most value, but we follow the wisdom which is of God, whereby those things which are greatly valued in this world are counted but as loss. For this *κατόρθωμα*, which is duty carried out entirely and in perfection, starts from the true source of virtue. On this follows another, or ordinary duty. This shows by its name that no hard or extraordinary practice of virtue is involved, for it can be common to very many." [1] This principle of perfection is then applied to the pursuit of gain and other questions.

A very famous book of morals, somewhat more restricted in scope than the "De Officiis" of St. Ambrose, is the "Pastoral Care" of St. Gregory the Great. This, together with the same author's "Morals" on Job, was a favorite

[1] De Officiis, iii, c. 2.

textbook in the Middle Ages. It lays down the qualities required in those who have the cure of souls, how they themselves should live, how they should instruct and admonish those subject to their authority. The book was brought to England by St. Augustine and translated into English by King Alfred for the benefit of the bishops and priests of his kingdom.

A word must here be said on Christian asceticism, which has been so utterly misunderstood and misrepresented by such writers as Lecky and Harnack, and whose true relation to Christian morals is so seldom perceived by non-Catholic authors.

Christ our Lord expressly taught that renunciation of self, of the world with its riches and pleasures, was in a certain sense a necessary condition of discipleship. This renunciation, however, admitted of different degrees, as is also plain from the Gospels. Some were called only to spiritual poverty and detachment, and these hoped to save their souls by remaining in the world without being of it. Outwardly they lived much like other people, but their affections were detached from this world and centered on God and eternity. They went to heaven by the way of the commandments. Others, on the contrary, voluntarily embraced the counsels of poverty, chastity, and obedience, given by Our Lord to those who were called, and who felt that they had the spiritual strength to follow the call. They made a special profession of following the counsels, and were assigned a place of honor in the Christian assemblies, but at first they seem to have lived in the bosom of their families. They soon, however, began to find it very difficult to persevere in their adopted form of life while exposed to the distractions and temptations of the world,

and this, together with the violence of the persecutions, drove them into the desert. There they lived at first solitary lives as hermits, but before long they began to come together and put themselves under the authority of some ancient Father of the desert renowned for his prudence and sanctity. Their aim was to subdue their passions and ascend the heights of Christian perfection. The task is notoriously difficult both in theory and in practice, and many mistakes were made. The Church had not yet drawn up her minute code of laws for the regulation of religious life. Those writers, however, who industriously pick out the mistakes and the exaggerations of indiscreet fervor, and piece them together to produce a picture of Christian monachism and asceticism, only succeed in producing a caricature. To convince oneself of this it is sufficient to dip into the "Institutes of Monasteries" and the "Conferences" of Cassian, who was in the middle of a long life in the year 400. In the twelve Books of his "Institutes" Cassian describes the dress of the monks, their method of singing the divine office, the training of postulants and novices, and then he devotes the last eight Books to a minute account of the nature, causes, and remedies of the eight principal vices which bar the way to the summit of Christian perfection. He maps out every portion of the pilgrim's progress to his heavenly country, and shows what dangers and obstacles he will meet by the way. In brief, he says, progress toward perfection begins with the fear of God, from which arises a salutary sorrow for sin, which leads to renunciation and contempt of the world; this begets humility, from which springs mortification of the will, and by this all vices are subdued and extirpated. Then all virtues begin to flourish in the soul, which thus

arrives at purity of heart and the perfection of apostolic charity.[1]

The vices to be overcome are classed under eight different heads by Cassian, and he says that the classification was admitted by all.[2] These principal or capital vices are typified by the seven peoples whom the Israelites were commanded by God to extirpate when they came into the land of promise. Egypt makes the eighth from which they had been delivered, and which, Cassian says, typifies gluttony. From this vice the monk is indeed delivered by his abandoning the world for the desert, but he may not extirpate it altogether; he should aim only at curbing its excesses. Gregory the Great adopted in substance the teaching of Cassian on the capital vices, but by making pride the queen of all the rest, and placing it in a category by itself, the other seven became the seven deadly sins which with their daughter vices were so famous in the literature of the Middle Ages, and figure in the books of morals and in the catechisms of Christian doctrine to the present day.

To show how conservative the Catholic tradition has been even in the expression of doctrine I will give the following passage in St. Gregory's own words:

"Ipsa namque vitiorum regina superbia cum devictum plene cor ceperit, mox illud septem principalibus vitiis, quasi quibusdam suis ducibus devastandum tradit. Quos videlicet duces exercitus sequitur, quia ex eis proculdubio importunæ vitiorum multitudines oriuntur. Quod melius ostendimus, si ipsos duces atque exercitum specialiter, ut possumus, enumerando proferamus. Radix quippe cuncti mali superbia est, de qua, Scriptura attestante, dicitur

[1] De Cœnobiorum Institutis, lib. iv, c. 43. [2] Collatio v, c. 18.

Initium omnis peccati est superbia (*Ecclus.* x. 15). Primae autem ejus soboles, septem nimirum principalia vitia, de hac virulenta radice proferuntur, scilicet inanis gloria, invidia, ira, tristitia, avaritia, ventris ingluvies, luxuria. Nam quia his septem superbiæ vitiis nos captos doluit, idcirco Redemptor noster ad spirituale liberationis prœlium spiritu septiformis gratiæ plenus venit.

"Sed habent contra nos hæc singula exercitum suum. Nam de inani gloria inobedientia, jactantia, hypocrisis, contentiones, pertinaciæ, discordiæ, et novitatum præsumptiones oriuntur. De invidia, odium, susurratio, detractio, exsultatio in adversis proximi, afflictio autem in prosperis nascitur. De ira, rixæ, tumor mentis, contumeliæ, clamor, indignatio, blasphemiæ proferuntur. De tristitia, malitia, rancor, pusillanimitas, desperatio, torpor circa præcepta, vagatio mentis erga illicita nascitur. De avaritia, proditio, fraus, fallacia, perjuria, inquietudo, violentiæ, et contra misericordiam obdurationes cordis oriuntur. De ventris ingluvie, inepta lætitia, scurrilitas, immunditia, multiloquium, hebetudo sensus circa intelligentiam propagantur. De luxuria, cæcitas mentis, inconsideratio, inconstantia, præcipitatio, amor sui, odium Dei, affectus præsentis seculi, horror autem vel desperatio futuri generantur. Quia ergo septem principalia vitia tantam de se vitiorum multitudinem proferunt, cum ad cor veniunt, quasi subsequentis exercitus catervas trahunt. Ex quibus videlicet septem quinque spiritalia, duoque carnalia sunt." [1]

The "Conferences" of Cassian are represented by him as the teachings of celebrated abbots on various questions of the spiritual life. They are partly speculative, partly practical. There are twenty-four in all, each being divided

[1] Moralium, lib. xxxi, c. 45.

into a greater or less number of chapters. These two works have provided an ample store of moral and ascetical doctrine for all subsequent Catholic writers on the subjects treated in them.

A large portion of moral theology is taken up with the duties arising from the positive legislation of the Church. In this legislation we have the practical application of Christian moral principles to the varying requirements of time and place, and change and variety are here conspicuous. With the establishment of the Christian religion the positive precepts of the Mosaic law ceased to be binding, but the Church received from her divine Founder authority to make new laws for the sanctification and salvation of her children. The apostles used this legislative authority, as we see from the Epistles of St. Paul, especially from those to Timothy and Titus, and within twenty years after the Ascension we find them legislating in the Council of Jerusalem on the disputed question of legal observances. The decree which we have in the Acts [1] was a true positive law imposing a new obligation on the faithful concerned, as long as the peculiar circumstances of the time rendered its observance desirable and necessary.[2] This council of the apostles formed the type and pattern for the ecumenical and provincial councils of the Church which were to be held in the future. Innumerable laws and regulations have been enacted by these, affecting Catholic life, discipline, and worship. The Bishops, too, as successors of the apostles have continued in all ages to exercise the legislative authority committed to them by God and the Church. The Roman Pontiffs, especially, in the exercise

[1] Acts xv. 28, 29.

[2] It ceased to bind in the Latin Church about the ninth century.

of their jurisdiction over the whole Church in succession to Blessed Peter, have in all ages made wise laws for the peace and prosperity of the Christian people. As instances of this action of the Popes in the early centuries may be mentioned St. Clement's first epistle to the Corinthians in the first century, St. Victor's decision about the observance of Easter in the second century, St. Stephen's about the baptism of heretics in the third, and similar action on the part of Popes Liberius, Damasus, and Siricius. Subsequently papal decisions became frequent and notorious. Collections of the decisions issuing from all these sources of positive law began to be made in very early times. Of these some have survived the ravages of time. The "Didascalia of the Apostles" may in the judgment of the learned be ascribed to the first half of the third century, and the so-called "Constitutions of the Apostles" together with the "Canons of the Apostles" to the early part of the fifth century. The materials of which these collections are composed are, of course, still more ancient. At the beginning of the fourth century the decrees of the councils were collected and arranged at first in chronological order in the East. At the beginning of the sixth century systematic collections arranged under suitable titles began to appear. Of these early collections of canons the most celebrated is that of John the Scholastic. In the West, Dionysius Exiguus made his translation of Greek canons into Latin about the year 500. A copy of this collection was presented by the Pope to Charlemagne when he was in Rome, and he caused it to be received and approved by the clergy of his empire in 802 at the great Council of Aix la Chapelle. Collections of Church laws continued to grow in number and in bulk until in the twelfth century the monk Gratian

issued his "Decretum" which became the most famous of them all, and still forms the first volume of the "Corpus Juris Canonici." It contains some 4000 decisions on law and morals taken from the decrees of Popes, the canons of councils both general and particular, the opinions of the Fathers, and even from the civil law.

No attempt of course can be made in this short sketch to trace the varying phases through which the innumerable positive laws of the Church have passed. It will be sufficient for our purpose to trace in outline those chief precepts which bind all Catholics and which are specially known as the precepts of the Church. They are usually reckoned six in number: the due observance of Sundays and feast-days, the days of fasting and abstinence, confession and communion, the support of pastors, and the prohibition of marriage within certain degrees of kindred and of its solemnization at certain times of the year.

The observance of the Sunday and its substitution for the Sabbath appears to be due to apostolic institution. There are traces of it in the New Testament; in the "Didaché" the faithful are bidden to come together on the Lord's Day, as it was called even then in honor of the Resurrection, and offer the eucharistic sacrifice after confessing their sins. In the second century the custom of observing the Lord's Day was universal throughout the Church. The chief duty to be performed on that day was to hear Mass. Very soon particular provincial laws began to be enacted urging the obligation and imposing penalties on transgressors. At the beginning of the fourth century the Council of Elliberis in Spain decreed that any one who might be absent from Mass on three successive Sundays should be deprived of communion. The Council of Agde

at the beginning of the sixth century prescribed that all were to hear an entire Mass on Sunday and not leave until after the blessing of the priest on pain of a public reprehension by the Bishop.

It was natural that when Sunday became the Christian Sabbath it should be kept much in the same way as the Jews kept their Sabbath. While knowing from the teaching of Our Lord Himself that pharisaic exaggeration was to be avoided in this matter, and from St. Paul that the sabbatical rest was no longer of obligation, still St. Cæsarius of Arles in the sixth century expressly says that the Doctors of the Church decreed to transfer all the honor of the Sabbath to the Lord's Day. The very necessity of hearing Mass on that day made a certain abstention from work also necessary. Tertullian testifies to the Christian custom of his day in this respect. Constantine prescribed that judges and artisans in towns should abstain from work on the Sunday, but that agriculture should be allowed on account of necessity. The strictness with which the Sunday repose was observed varied somewhat according to time and place in the period with which we are dealing.

Besides the Sunday other feast-days began gradually to be observed in the same manner by hearing Mass and abstaining from servile work. Easter and Pentecost were assigned to movable Sundays, but the days on which renowned martyrs suffered for the Faith, those on which churches were dedicated, Ascension Day, Christmas Day, and the Epiphany, were soon added to the list. The letter of the Church of Smyrna concerning the martyrdom of St. Polycarp in the middle of the second century expresses the intention of celebrating the anniversary of the day of mar-

tyrdom with joy, both in memory of those who had suffered and as a preparation for those who survived.[1]

As the Christian Church took over the Jewish Sabbath but changed the day on which it was observed and rejected the exaggerations of the Pharisees in its observance, so, too, it adopted the Jewish practice of fasting at stated times. As we have seen from the "Didaché" the fast of Monday and Thursday was changed into one on Wednesday and Friday. The obligation of fasting on all Wednesdays and Fridays ceased almost entirely about the tenth century, but the fixing of those days by ecclesiastical authority for fasting, and the desire to substitute a Christian observance at Rome for certain pagan rites celebrated in connection with the seasons of the year, seem to have given rise to our Ember Days. In the time of St. Leo, in the middle of the fifth century, the Ember Days were a settled institution, though the time at which they fell varied somewhat at different times and in different places.

The earliest indication that we have of the fast of Lent is contained in a short extract from Irenæus which has been preserved for us by Eusebius.[2] Writing to Pope Victor about the middle of the second century, St. Irenæus says that the controversy in the East was not merely about the proper time of celebrating Easter but also about the manner of fasting. "For some think," he says, "that they ought to fast only one day, some two, some more days; some compute their day as consisting of forty hours night and day; and this diversity existing among those that observe it is not a matter that has just sprung up in our times, but long ago among those before us, who perhaps not having ruled with

[1] Cf. A. Villien, Histoire des Commandements de l'Église, 1909.
[2] Historia ecclesiastica, v, c. 24.

sufficient strictness, established the practice that arose from their simplicity and inexperience, and yet with all these maintained peace, and we have maintained peace with one another; and the very difference in our fasting establishes the unanimity of our faith." At the time this was written the Lenten fast was obviously very short, and there was no uniformity even in its duration. Tertullian, fifty years later, refers to the Lenten observance as the fulfillment of the words of Our Lord: "But the days will come when the bridegroom shall be taken away from them — then shall they fast in those days."

The first allusion to a period of forty days' fast occurs in the fifth canon of the Council of Nicæa (325). In the time of St. Leo in the fifth century the period was sufficiently well established to be referred by him to apostolic institution. The period was six weeks, but omitting Sundays the actual fasting days were only thirty-six in number. The four days before the first Sunday of Lent were added sometime in the seventh century. The fasts assigned to certain vigils arose from the practice of the early Christians of assembling on the eve of a feast and spending the night in prayer, fasting, and reading the Scriptures. By degrees matins took the place of the night office, and the vigil office was moved back to the Saturday morning, as we see to this day from the morning office of Holy Saturday. The fast was thus prolonged through the Saturday till after the morning office of the feast of next day.

The fast which used to be observed on the rogation days took its rise in France at the close of the fifth century and by degrees spread to other Churches. The interrupted fast of Advent was introduced as a preparation for Christmas toward the end of the fourth century. The manner of

fasting has varied greatly at different times and in different places. At first the fast seems to have been absolute and continuous. During the days of the bridegroom's absence the faithful neither ate nor drank anything. When the period was lengthened such a total fast became impossible, but at least in the East food was restricted on fast days to one meal of bread, salt, and water, taken in the evening, or at least not before three in the afternoon. In the time of St. Gregory fish was allowed at the single meal in the West. Flesh meat was never allowed on fasting days.

The essence of fasting is still placed by theologians in the single meal, but many relaxations have crept in by degrees. The monks while listening to a *Collatio* of Cassian before going to bed introduced the practice of drinking an acidulated liquor called *posca*. By degrees fruits and lighter kinds of food in limited quantity were added, and when about the thirteenth century the full meal began to be taken at twelve midday, the evening collation became an established practice.

In the thirteenth century it was an accepted principle that liquid does not break the fast, and this became the source of another relaxation. A little wine, or coffee, or chocolate, was taken sometimes in the morning, with candied fruits (*electuaria*) on occasion. The practice was not condemned when the Sacred Penitentiary was asked about it in 1843, provided that the solid food taken then did not exceed two ounces in weight.

At first all seem to have fasted except children and those who were sick. St. Thomas' opinion that those who are still growing are not bound to fast, and that in general the period of growth lasts till the completion of the twenty-first year, has prevailed. Exemptions in favor of workmen and

others were soon admitted, and toward the close of the Middle Ages dispensations from the law of fasting began to be granted. The Lenten indult is now an established custom.

The precept of abstinence from flesh meat which is still observed on Fridays is a survival of the obligation of fasting on that day which obtained in the primitive Church. As we have seen, the "Didaché" prescribed fasting on all Wednesdays and Fridays, and to this fast all the faithful except mere children and the sick were formerly bound. About the tenth century the obligation of the Friday fast was reduced to one of abstinence from flesh meat, and the Wednesday fast after being similarly mitigated gradually disappeared altogether.

While in the East Saturday was observed as a festival in honor of the creation,[1] at Rome and in other Churches of the West it began in early times to be observed as a fasting day. On account of the difference of discipline on this point great difficulties arose in the fourth century, as we know from the correspondence of St. Augustine and St. Jerome. St. Ambrose said that he kept festival on Saturday when he was at Milan and a fast when at Rome, and he advised St. Augustine to follow the same rule. About the eleventh century the Saturday fast was reduced to an obligation of abstinence, and this is the common law of the Church to-day, but many countries are dispensed from its observance. A dispensation from abstinence on Saturdays, the feast of St. Mark, and on Rogation Days was granted for England by a rescript of Propaganda, May 29, 1830.

The Sundays in Lent were never observed as fasting

[1] Apostolic Constitutions, vii. 23.

days, but they early became days of abstinence as they are to this day, though usually a dispensation is granted to eat meat on them.

Annual confession and communion was first made a positive universal law of the Catholic Church in the Fourth Lateran Council (1215). As we know from the Gospel of St. John [1] both confession and communion were prescribed by Our Lord, but He determined neither precept in detail. The practice of the different Churches in the early ages was various in respect to both precepts. We will first trace in outline the history regarding the precept of annual communion.

From the earliest times, as we have seen, Mass was celebrated for the assembled faithful on Sundays, and all who were present appear to have received holy communion. In some places it was the practice for the faithful to take home with them consecrated particles and communicate themselves therewith out of Mass. Many at Rome, in Spain, and in Africa received communion daily. This was a common practice at the end of the fourth century, as we learn from the letters of St. Jerome and St. Augustine. The latter interprets the daily bread for which we ask in the Lord's Prayer as holy communion. The Council of Agde (506) decreed that those who did not communicate at least on the feasts of the Nativity, Easter, and Whit-Sunday were not to be reckoned as Catholics. In subsequent centuries this became a general rule in the Western Church; in the East, according to Theodore of Canterbury, the law was much stricter. The Greeks, he says, both laity and clerics, communicate every Sunday, and any one who omits to do so on three Sundays is excommunicated.

[1] John vi. xx.

A synod held 747 at Cloveshoe in England prescribed that innocent youths and those in whom years had cooled the ardor of passion should be exhorted to communicate very frequently. A synod held under St. Patrick in the fifth century decreed that the Eucharist was to be received at all events at Easter, and that any one who neglected this duty was not a member of the Church. Robert Pullen, an Englishman who wrote in the middle of the twelfth century, tells us that in his day some communicated more frequently, others less so, but that even laymen followed the rule of the Fathers and communicated at least three times a year. So that when the Lateran Council established the universal law that all who had come to years of discretion were bound to communicate at least at Easter, it made no new rule; it merely enforced by universal statute the least that was expected of any one who called himself a Catholic.

The precept of annual confession is intrinsically connected with that of Easter communion both in the Church's legislation and in its own nature. For, as the Catechism of the Council of Trent teaches,[1] the power of order, although primarily it refers to the consecration of the Eucharist, yet also comprises all that is necessary to dispose the faithful to receive the Eucharist worthily and profitably. It comprises, then, the power to forgive sins, inasmuch as no one who is conscious of mortal sin may receive holy communion without previous confession and absolution. The Council of Trent [2] teaches that the words of St. Paul, "Let a man prove himself," have always been understood in the Church of the necessity of sacramental confession and absolution before holy communion when there is con-

[1] Pt. ii, c. 7, q. 6. [2] Supra, p. 106.

sciousness of mortal sin. The law of the Lateran concerning annual confession and communion is thus one law, confession being ordinarily a necessary preparation for holy communion in those who rarely communicate. That the Church always understood this is witnessed to by Alcuin in the eighth century,[1] by St. Leo in the fifth,[2] St. Augustine in the fourth,[3] and St. Cyprian in the third.[4] We have the same conjunction of confession and communion in the sentence of the "Didaché": "But on the Lord's day do ye assemble and break bread, and give thanks, after confessing your transgressions, in order that your sacrifice may be pure."[5] In all probability the confession here spoken of should be interpreted as meaning sacramental confession to a priest. The Council of Trent, then, was justified in saying that before receiving holy communion it had always been considered a duty to go to confession when there was consciousness of mortal sin. In the fifth or sixth century a practice sprang up which was the forerunner of the Lateran law of annual confession. At the beginning of Lent public penance was imposed on those who had been guilty of great and notorious crimes. In some of the Penitential Books[6] the priest is bidden to invite all who are conscious of mortal sin, and even all who by any sin whatever have soiled their baptismal robe, to make humble confession to their own priest on Ash Wednesday, and accept the penance enjoined according to the canons. If there was any special reason for granting absolution at once, that was done,

[1] De Psalmorum Usu, P. L. C. i. 499.
[2] Epist. 108, P. L. liv. 1011.
[3] Serm. 278, P. L. xxxviii. 2273.
[4] Epist. 10, P. L. iv. 254; Epist. 11, ib. 257; De Lapsis, xvi. ib. 479
[5] C. xiv. [6] Schmitz, Bussbücher, i, 775.

otherwise absolution was deferred till Maundy Thursday when, the penance having been performed, the penitent was absolved and admitted to communion. This was a mitigation of the earlier discipline of some Churches, especially in the East, according to which public penance sometimes lasted for years.[1] The name of Shrove Tuesday, and the custom of receiving ashes on the head on Ash Wednesday, still remind us of the old discipline of the Catholic Church. It was natural, then, that when the Church made it obligatory on all to receive holy communion at least every Easter, it should also impose the obligation of annual confession. The law indeed does not indicate Easter as necessarily the time for the annual confession, but in practice it follows the time for the annual communion. Originally the annual confession had by law to be made to the parish priest or to the Bishop of the penitent, but for centuries it has been lawful to make it to any priest who has approbation for hearing confessions in the place.

The faithful are bound by natural and divine law according to the teaching of St. Paul[2] to contribute to the support of their pastors. For some centuries the revenues of the Church derived from the offerings of the faithful and from other sources constituted one fund, and this was administered by the Bishop. The support of the poor, the maintenance of public worship, as well as the support of the clergy and other needs were all supplied from the common fund. According to a decretal of Pope Gelasius (501) the Church revenues were to be divided into four portions, one for the Bishop, another for the clergy, a third for the relief of the poor and strangers, the fourth for the

[1] Duchesne, Christian Worship, p. 435.
[2] 1 Cor. ix, Gal. vi. 6.

Church fabrics. In his celebrated answers to St. Augustine, Gregory the Great tells the first archbishop of Canterbury that as he was a monk he did not need a separate portion, and should be content to share in common with his clergy. For several centuries no positive law of the Church was needed to compel the faithful to do their duty in this matter. The Fathers who occasionally urge the obligation are content to appeal in support of it to the teaching of St. Paul or to the law of tithes under the Mosaic dispensation. The Penitential attributed to St. Theodore enjoins that the custom of the province should be observed relative to contributions to the Church, but that the poor were not to be subjected to violence for the sake of tithes or other matters. Positive ecclesiastical laws, however, began to appear both on the continent and in England in the eighth century. Thus the seventeenth article of the legatine council held in England by the authority of Pope Adrian I (785–787) contained the following provision: "Wherefore also we solemnly lay upon you this precept, that all be careful to give tithes of all that they possess, because that is the special part of the Lord God; and let a man live on the nine parts, and give alms." At first there was some variety in the appropriation of tithes, but when the parochial system was introduced, between the tenth and thirteenth century, the appropriation of tithes to the parish priest became the settled rule. In modern times, at least in English-speaking countries, the offerings of the faithful constitute almost the only source of Church revenues as they did in the early ages of Christianity, and their apportionment and distribution are regulated by special laws.[1]

[1] Constitution of Leo XIII, Romanos Pontifices.

As marriage was raised to the dignity of a sacrament by Christ our Lord, and the Church alone has jurisdiction over the administration of the sacraments, it follows that Christian marriage is subject exclusively to the laws of God and of the Church. There are several passages in the Epistles of St. Paul [1] which show that the Church was conscious of her authority in this matter, and that she used it from the earliest times. St. Ignatius in his letter to St. Polycarp says that it is proper that Christians should contract marriage according to the judgment of the Bishop, and Tertullian asserts that marriages which were contracted without being previously notified to the Church were in danger of being considered as no better than adulteries and fornications. The history of the many laws relating to Christian marriage is too large a subject to be treated here even in outline. We will confine ourselves to the impediments of consanguinity and close time.

The natural and divine law prohibits marriage in the first degree of the direct line, and most probably in all degrees indefinitely in the same line. In the collateral line, also, it most probably forbids marriage at least in the first degree. With respect to further degrees in the collateral line the Church adopted the Mosaic legislation, and there are no traces of her having exercised further the independent power which she certainly possessed to enlarge or restrict the limits of kindred before the fourth or fifth century. The Council of Epaon (517) forbade marriages between second cousins, Gregory II (721) prohibited marriage with relations in general, and from the eighth to the elev-

[1] 1 Cor. v, vii; 2 Cor. vi. 14.

enth century the prohibition was extended to the seventh degree according to the canonical mode of reckoning. The fourth Council of Lateran (1215) restricted the prohibition to the fourth degree, and this law still remains in force.

As the solemn celebration of marriage is not in keeping with penitential exercises, a council of Laodicea in the fourth century forbade the celebration of marriage during Lent. Subsequently the solemnization of marriage was forbidden from Septuagesima Sunday till the octave of Easter, during three weeks before the feast of St. John Baptist, and from Advent till after the Epiphany. There was a dispute as to the three weeks before the feast of St. John Baptist, and Clement III, at the end of the twelfth century, decided that the period was to be interpreted as extending from the Rogation Days till the Sunday after Pentecost. The Council of Trent[1] decreed that close time for the solemnization of marriage was to extend from Advent till after the Epiphany, and from Ash Wednesday till after Low Sunday, and this is the modern discipline.

We must not leave this first period in the history of Moral Theology without saying something about the Penitential Books which began to appear in the sixth century and subsequently became very numerous. They were intended as a help to Bishops and priests in their duty of imposing canonical penances on sinners and reconciling them to God and the Church. At first they were little more than lists of sins with the appropriate canonical penance annexed to each sin. The quality and length of penance assigned were

[1] Sess xxiv, c. 10.

derived from the councils or from the canonical letters of St. Basil, St. Peter of Alexandria, St. Athanasius, and other Fathers of the Church. Afterward chapters were added containing short moral rules on a great variety of subjects, the method of receiving and dealing with penitents, and the method of reconciling them. They are of importance in the history of Moral Theology as furnishing a standard by which the malice of various transgressions was measured according to a great variety of circumstances. They fell into disuse with the gradual cessation of public penance in the Church.

## Section II

### *The Scholastic Period*

It is not possible to indicate any particular year when the scholastic period began. We may say that the patristic period closed with the death of St. Bernard, the last of the Fathers, in the year 1153. Many of the characteristics of scholasticism, however, and especially the application of philosophy to the exposition and defense of theology are conspicuous in the works of many of the Fathers. In their work, too, of systematizing theology the schoolmen had many predecessors among the Fathers, and especially St. John Damascene and St. Isidore of Seville. Nor is the common assertion that the Fathers favored Platonism while the scholastics adopted Aristotelianism quite warranted by facts. Clement of Alexandria especially, and other Fathers as well, were eclectic as philosophers, and borrowed what they thought was true from any and every source. Still we may for practical purposes say that scholasticism began in the twelfth century. Then it was

that the growth and development of theology began afresh. It had been interrupted for seven hundred years by the necessity of civilizing the barbarians who had broken up the Roman Empire and settled in its territories. From this time moral theology has come down to us in two distinct channels. Peter Lombard may be looked upon as the fountain-head of the first stream, and St. Raymund of Pennafort of the second.

Peter Lombard wrote his work on the Sentences between the years 1145 and 1150. He therein treats of the whole of theology, both dogmatic and moral. He wished to counteract the rationalizing tendencies which as a pupil of Abelard he had noticed in the schools of Paris. To the various and erroneous views which the spirit of rationalism had introduced, Peter opposed the traditional doctrine handed down in the writings of the Fathers. After much consideration, as he tells us, he found a guiding principle for the distribution and ordering of the subject-matter of theology in a sentence of St. Augustine. Christian revelation, contained in the Holy Scriptures, has for its subject-matter either things or signs. Under signs come the sacraments, and things are either such as we have fruition of, or such as we use, or such as we both use and enjoy by fruition. Under the first head comes God, one in nature and three in person. Under the second come all created things, the angels, man, his end, fall, and redeeming grace. Under the third, the incarnation, faith, hope, charity, the seven gifts of the Holy Spirit, the Ten Commandments. The whole matter of theology is thus systematically arranged in four Books. Each Book is divided into Distinctions, devoted to some special point on which the traditional doctrine is laid down by quoting appropriate extracts (*Sententiæ*) from the

works of the Fathers. Apparent or real differences of opinion are noted and as far as possible reconciled with each other. Although Hugo of St. Victor, Robert Pullen, and other theologians had previously composed similar books of Sentences, yet the work of Peter Lombard soon eclipsed them all in the welcome that it received. It remained the recognized textbook of theology until the end of the sixteenth century, when its place was taken by the "Summa" of St. Thomas. Nearly all the great scholastics wrote Commentaries on the "Sentences" of Peter Lombard, developing, illustrating, defending, and sometimes correcting the doctrine which they found there, especially from the speculative point of view. In these Commentaries and in the Summas of scholastic theology we have a most abundant and valuable source of the speculative side of Christian ethics.

To meet the more practical and concrete needs of the confessor, St. Raymund of Pennafort composed his "Summa de Pœnitentia et Matrimonio," about the year 1235. He, also, merely collected and systematized the abundant material which had been left by his predecessors. He had no more intention of introducing changes into the traditional doctrines of Christianity than had Peter Lombard. But as his aim was not speculative but practical, he drew his material especially from Gratian's "Decretum," from the decisions of Popes and the councils of the Church, as well as from the Fathers. The work "De Pœnitentia" is divided into three Books. In the first Book sins against God are treated of, in the second sins against one's neighbor, and in the third irregularities, dispensations, purgations, sentences, penances, and remissions. Each Book is divided into Titles, which contain an orderly and logical exposition of some

particular subject. Thus in the first title on *Simony*, the sin is defined, the origin of the name is explained, the different kinds of simony are indicated, with the penalties incurred and the dispensations which may be obtained. Then follows a discussion of doubtful questions and cases. Finally some rules of law on the matter are laid down and explained.

The work of St. Raymund was the first of those innumerable handbooks written for the training and use of the confessor especially from the practical and casuistical point of view. Although in the treatment of the different titles the work of St. Raymund leaves little to be desired, yet it lacks something in orderly arrangement and in completeness. These defects were soon made good by others. A Friar Minor, of Asti, in the north of Italy, composed the "Summa Astensis" in the year 1317. In the Roman edition of 1728 it fills two volumes folio, and in its aim, in the matter which it contains, and in the method of treatment, it differs little from the handbooks of moral theology which are published at the present day. The matter is divided into eight Books. The first Book treats of divine and human law and contains the doctrine of the Ten Commandments. The second treats of virtues and vices, beginning with several titles devoted to human acts, voluntary and involuntary actions, to expounding in what the goodness or malice of actions consists, and merit. The cardinal and theological virtues and the sins opposed to them are explained in detail. The third Book contains the doctrine on contracts and last wills; the fourth that on the sacraments in general, and on Baptism, Confirmation, and the Holy Eucharist. The treatise on Penance and Extreme Unction in the fifth Book contains also the doctrine on prayer, fasting, almsdeeds, restitution,

and indulgences. That on Orders in the sixth Book treats also of churches and sacred vestments, ecclesiastical burial, parishes, prebends, tithes, of the various grades of the clergy and of religious and their obligations. Censures and ecclesiastical penalties occupy the seventh, and Matrimony the eighth Book.

The dogmatic treatment of moral theology reached its high-water mark in the second part of the "Summa" of St. Thomas of Aquin. That marvelous production of genius has never been surpassed or even equaled as an exposition of the general principles of Christian ethics. Neither has the casuistic treatment of morals in general made much progress since the thirteenth century. Of course there have been numerous changes in discipline during the last six centuries, and these require to be noted in new moral treatises as they occur. There have also been some changes in theological opinion. As an illustration of such a change we may instance that concerning the use by superiors of knowledge gained from confession. St. Thomas and scholastic theologians commonly held that a superior who knew from confession of a dangerous occasion of sin to one of his subjects might use his authority to remove his subject out of the danger, provided that thereby he violated no principle of justice nor made known to others the sin which had been confessed to him. This opinion is now quite obsolete and it has been virtually condemned by the Holy See.[1] But in spite of some such changes in detail, the general assertion remains true that moral theology to-day is substantially what it was in the thirteenth or at the beginning of the fourteenth century.

[1] Supra, p. 232.

There is, however, one important exception to this general statement. That exception is due to the express formulation at the end of the sixteenth century of the doctrine of probabilism.

We must, however, be on our guard against exaggerating the importance of probabilism and confounding it with moral theology in general. After all, probabilism is only concerned with the solution of doubtful questions. There is an immense body of moral doctrine which is certain and where probabilism or other similar theory of morals does not enter. There are also, it must be confessed, many doubtful questions, especially connected with the application of general rules to particular cases, and it is in the solution of these doubtful and disputed questions that probabilism is concerned. All Catholic divines state or take for granted the doctrine that it is sinful to act with a doubtful conscience, without making up one's mind that the action which is contemplated is morally right. This is the teaching of Holy Scripture: "All that is not of faith," *i.e.* done with the conscientious conviction that it is right, "is sin," says St. Paul.[1] But if this be so, what are we to do in doubtful matters, where perhaps divines themselves disagree, and some teach that an action is right, while others assert that it is wrong? In such cases we can only act, according to the doctrine of St. Paul, if we are able to make up our mind that the action is lawful and honest. How can this be done?

Before the close of the sixteenth century, when Bartholomew à Medina published his "Exposition" on St. Thomas, there was no commonly recognized method for forming one's conscience in doubtful matters. The

[1] Rom. xiv. 23.

"Summa Astensis" devotes the last title of the second Book to the subject of "Perplexities of Conscience." The author distinguishes perplexities of law from perplexities of fact. The former, he says, occur when there are two apparently contrary opinions about the lawfulness of an action, the latter when a man believes that in avoiding one sin he must perforce commit another. He has much to say about perplexities of fact, but about perplexities of law, which alone concern us here, he simply observes that they can be removed in whatever state a man may be, but he does not tell us how this may be done. He refers indeed to Alexander of Hales, who wrote before St. Raymund of Pennafort, and who in the article of his "Summa" devoted to the subject of "Conscience" tells us that a perplexity of law is to be removed by the unction of the Holy Spirit, who teaches concerning all things.[1] St. Raymund gives a more satisfactory rule and says shortly that a perplexity arising from a difference among Doctors is to be solved by reducing the contrary opinions to agreement, for there is no real but only apparent contradiction in law. This puts us on the right track; it tells us that for the solution of doubtful cases the theologians of the time followed the ordinary rules of legal interpretation, the chief among which was the rule of law which guided Gratian in the composition of the "Decretum" and Peter Lombard in his work on the Sentences, and which the Roman lawyers had expressed by saying that it is meet to make one law agree with another — *Conveniens est jura juribus concordare.*[2]

Although this was the chief rule of law to be followed when authorities differed, it was by no means the only one.

[1] Summa, ii, q. 120.
[2] L. unica, C., de inofficiosis dotibus.

Later authors, such as Angelus de Clavasio (1480), Sylvester Prierias (1516), and Navarrus (1560) give lists of the different rules of law to be applied to the solution of doubtful cases in different circumstances. We may take them from Navarrus, as they are substantially the same in all the authorities of the time. When there are different opinions among Doctors, says Navarrus in effect, that opinion should be preferred which is confirmed by custom, or grounded on a text of law, or which rests on an invincible argument. If none of these rules serves, then the common opinion should be followed, and that may be called a common opinion which six or seven approved authors adopt, though there may be fifty others who blindly follow each other like sheep against it, for weight and not number is mainly to be considered in such questions. If that rule does not suit the case, then the opinion should be chosen which is backed by more numerous authorities and reasons; then that which is more lenient, or which favors marriage, a last will and testament, liberty, a private individual against the State, the validity of an act, or the defendant in an action at law. If in none of these ways one opinion is better than the other, then that should be adopted which the greater number of theologians follow if the matter belong to theology, or canonists if it belong to canon law, or civilians if it belong to civil law. To these rules Navarrus adds the note that in the forum of conscience it is sufficient to choose as true the opinion of a man of virtue and learning.[1]

Sylvester Prierias tells us that all were agreed that when Doctors differed, a man might follow the opinion of one Doctor even though he was drawn to follow him by affection

[1] Manuale confessariorum, c. 27, n. 288.

without subtle investigation into the grounds on which his opinion rested.

While the Fathers of the Church, such as Gregory Nazianzen, and the schoolmen with St. Thomas solved particular cases of doubt in favor of liberty by applying the rule of probabilism that a doubtful law cannot impose a certain obligation, yet up to the time of Medina it was commonly held that in doubtful cases a man was bound to follow the opinion which seemed to him the better grounded or the more probable. The Dominican Bartholomew à Medina (1577) was the first to show that if it were a question of obligation, not of mere counsel, this was illogical. The more probable opinion may be the safer and better opinion, but we are not usually bound to take the safer or better way; we are at least allowed to take that which is good and safe. And a probable opinion is safe, for good and wise men see no sin nor danger of sin in it, else it would not be probable. So that a probable opinion may be followed even by one who knows and holds that the contrary opinion is more probable.

By these and other arguments Medina put probabilism on a firm basis, and the doctrine was at once received on all hands. It was the logical deduction from principles which all admitted, and so theologians of all schools accepted it at once, though some of them do not seem at first to have realized its far-reaching consequences. Dr. Hall, who published his work "De Quinquepartita Conscientia" in 1598, accepted and defended the new principle, but he placed it side by side with the older methods of forming one's conscience which he copied from Navarrus. Of these methods he remarks that they are so many different ways of forming a probable opinion. He did not fully realize, as

it seems, that the new principle was universal, and rendered the use of the old rules to a great extent unnecessary in the forum of conscience. The same may be said of Azor, who published the first volume of his "Institutiones Morales" in the year 1600. Other theologians, however, such as Vasquez, Suarez, Salon, Laymann, soon realized the significance of the new method, and proceeded to explain, develop, and on certain points to limit its application. It was seen that it can only be applied where the sole question is whether an act is sinful or not; it may not be applied where an end must be attained and may not be placed in jeopardy, or where the validity of an act is in question, or where there is question of the certain right of another.

## Section III

### *The Modern Period*

Almost the whole modern period from the opening of the seventeenth century is occupied with the controversy about the right system of moral theology. Modern research has confirmed the historical accuracy of the account of the origin of this dispute which Fr. Antony Terill or Bonville prefixed to his work "Regula Morum," published in 1676. Fr. Terill, S. J., was a learned and acute theologian who taught theology at the English College of the Society at Liège, now represented by Stonyhurst and St. Beuno's. Besides his "Regula Morum" he published another work, "De Conscientia Probabili," in 1668. He was a good and conscientious man and had ample means of knowing the facts to which he testifies. According to Fr. Terill, until about the year 1638 practically all Catholic

theologians of all schools accepted and taught probabilism. The only exception was the not very notable Italian Jesuit Comitolus, who published his "Responsa Moralia" in 1608. Comitolus taught probabiliorism and attributed the doctrine of probabilism quite falsely, to what he calls the shameful lapse of Armilla. The opinion of Comitolus passed almost unheeded, and there was peace and comparative harmony in the schools of morals. This peace began to be broken when the friends of Jansen were planning the publication of his famous book "Augustinus." The first of the five propositions which were extracted from that book and condemned by Innocent X in 1653 asserted that there were some laws of God which could not be observed even by the just, do what they would, and that God did not give grace to enable them to observe these laws. This heretical and blasphemous proposition, which made God a tyrant who gave orders which He knew could not be obeyed, was altogether out of harmony with the prevailing system of moral theology, and its Jansenist supporters began to attack probabilism in order to make an opening for their own rigoristic doctrine. According to Caramuel, who was at Louvain at the time and who wrote a book against them in 1639, they began to teach covertly that the use of probabilism was something new; that he who leaves the safe way and follows probabilism can not but be condemned by God; that opinions which are styled probable among us are not probable with God. The war between probabilism and antiprobabilism had broken out, a war conducted with the greatest heat and passion for two hundred years, and not even yet quite ended. The Louvain Doctors after the condemnation of "Augustinus" by the Holy See retaliated by issuing their propositions against probabilism

in 1655. The strategy was the same as led Döllinger and Reusch to publish their work on "Moralstreitigkeiten," after the definition of Papal Infallibility. The war, however, was soon carried into France where Jansenism had won the support of a few proud spirits of the highest intellectual gifts. Among these Pascal was pre-eminent, and he struck the hardest blow which probabilism has ever sustained by publishing his "Lettres Provinçiales" in 1656. The book is unfair and misrepresents the doctrines which it attacks, but its wit and style gave it at once a place in the classical literature of the world. It was condemned by Alexander VII at Rome in 1657, but by non-Catholics it is still regarded as the last word on the subject of Catholic and especially Jesuit moral theology.

Although the rise of Jansenism was the occasion of the outbreak of war, there were other causes also which contributed to the heat of the combat. Fr. Terill laments the disastrous laxity of opinion on moral questions which was conspicuous in many of the probabilist authors of the day. Many of these wrote books, not to expound the truth, but to attract attention to themselves and acquire notoriety. The means they employed for this purpose was the ventilation of new opinions in morals. By making use of the weak argument from similar cases they broached hitherto unheard of doctrines which were industriously collected by the casuists. The fact that somebody or other had said in his book that an opinion was probable and that it had not been condemned by the Holy See was held sufficient to merit for it a place among probable opinions in moral theology. Fr. Terill, himself a strenuous defender of probabilism, raised his voice against the inrush of laxity He did much by his writings to improve the theory by

stating and explaining it more accurately than had been done hitherto. He insisted that in order to be accepted as a rule of conduct it was not sufficient that an opinion should have some slight degree of probability, or should only be probably probable; it should be well grounded, seriously and solidly probable in the judgment of experts, of men of virtue and learning. The common method of proving probabilism by saying that one who acts on a probable opinion acts prudently, was objectionable on the theoretical side, and Terill improved it by making use of reflex principles, such as, "A doubtful law is not promulgated and can not bind." This eminent English Jesuit thus tried to stem the tide of laxity in an age of immorality by stating the theory of probabilism more accurately and limiting its use to its proper sphere. Other theologians with the same laudable end in view threw probabilism overboard altogether. This was especially the case with the theologians of the great Order of St. Dominic. A member of this Order had first formulated probabilism, as we have seen, and, as Salon testifies, other Dominicans were conspicuous as being the first to accept and teach it. The most famous Dominican theologians of the time, Ledesma, Bañez, Alvarez, Ildephonsus, and others were all probabilists. No anti-probabilist Dominican was heard of till the year 1656. In that year a general Chapter of the Order was held at Rome and all the members were urged to adopt the stricter opinion in morals. From that time onward the chief Dominican theologians have almost without exception been probabiliorists. Among others are the well-known names of Mercorus, Gonet, Contenson, Natalis Alexander, Concina, Billuart, and Patuzzi, the adversary of St. Alphonsus Liguori.

From the strife of parties different moral systems began to emerge. Jansenist rigorism, which required direct moral certainty against the law to justify a departure from its observance, and which was not satisfied even with a most probable opinion in favor of the lawfulness of an action, was condemned by Alexander VIII in 1690. Laxism, which was satisfied with even a slightly probable opinion as a rule of conduct, had been condemned by Innocent XI in 1679. Probabiliorism and probabilism together held possession of the field. At the beginning of the eighteenth century a few theologians such as Amort, Rassler, and Mayr, defended equiprobabilism. This system required an opinion in favor of liberty to be equally probable with that in favor of the law before allowing it to be used as a rule of morals. It would not allow any one to follow an opinion in favor of liberty which was distinctly less probable than that which favored the law.

These three systems still have their defenders, and the last has acquired strength from the adhesion to it of St. Alphonsus in the later portion of his life. St. Alphonsus Liguori is recognized as the Doctor of moral theology as St. Thomas is of dogmatic. By his writings he drove out of the Church the last remnants of rigorism, and firmly established that common doctrine in moral theology which it has been the aim of the author to expound in these volumes. In spite, however, of general agreement, there are some points of detail which are still matter of controversy among moral theologians.

St. Alphonsus was ordained priest in 1726 when he was thirty years of age. He had been taught the probabiliorist system of morals, but in the course of fifteen years of study and experience in the confessional he came to the conclu-

sion that the system was false and harmful to souls. He then adopted probabilism, and mainly using recognized probabilist authorities, especially of the Society of Jesus, whom he acknowledged to be his masters in this branch of learning, he composed his chief work, the "Theologia Moralis." The first edition appeared in 1748, and a second and much enlarged edition was issued in 1753. In 1755 St. Alphonsus published an elaborate dissertation on probabilism in which he proved the doctrine and refuted the objections commonly brought against it. He became bishop of St. Agatha of the Goths in 1762, and published another dissertation in which he appeared to adopt a new system of moral theology. While admitting that it is lawful to follow a solidly probable opinion, he denied that when in favor of the law there is an opinion which is certainly and notably more probable than its opposite, this latter can be really and solidly probable. The question is one of fact. If this proposition be considered from the practical and concrete point of view, its practical truth may be admitted, and St. Alphonsus probably understood it in this sense. Furthermore, it may be admitted that the doctrine has its value in deciding when an opinion is solidly probable or not, and this was what St. Alphonsus intended. He wished to exclude laxism from his system, and he invented this formula for the purpose. Moderate probabilists secure the same end by stressing *solidly* when they require a *solidly* probable opinion for a lawful rule of action. Considered theoretically and logically, the formula of St. Alphonsus is open to attack, as it is not true that a greater probability, even if notable and certain, does necessarily deprive the opposite opinion of all solid probability. On this point there is still some difference of opinion between

simple probabilists and equiprobabilists, but the dispute has little to do with practical morals. The dissertation of St. Alphonsus was not inserted in the "Moral Theology" of the saint till it reached its sixth edition, and his change of formula made little change in the doctrine of his work. It remained substantially what it always had been — a great work on moral theology written by a moderate probabilist.

Moral theology is still what St. Alphonsus left it. There is general agreement in the schools, a common doctrine which all accept; it only remains to apply this to the social and political conditions which we see growing up around us.

In this modern period of moral theology the sufficiency of attrition without any strictly so-called initial charity on the part of the penitent as a proximate disposition for the remission of sin in the sacrament of Penance may be considered as established. The changed conditions in our modern capitalist society have had their effect on moral questions, for morality must always take account of altered circumstances. Perhaps the chief result in this direction is that a practical solution has been attained of the long controversy about the lawfulness of taking interest for a loan of money. The lawfulness of the practice is now admitted; the only moral question is concerning the amount which may be exacted. The doctrine of the just price is applicable here; money, like other commodities, has in our modern capitalist society its just price.

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